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Titles 75 through 91

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REVISED CODE OF WASHINGTON
1996 Edition

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CERTIFICATE

The 1996 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.



MARY F. GALLAGHER DILLEY, 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 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. These additions do not constitute any part of the law.

(2) Although considerable care has been taken 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. When those who use this code detect errors in particular sections, a note citing the section involved and the nature of the error may be sent to: Code Reviser, Box 40551, Legislative Building, Olympia, WA 98504, so that correction may be made in a subsequent publication.

TITLES OF THE REVISED CODE OF WASHINGTON

<p>1 General provisions</p> <p>Judicial</p> <p>2 Courts of record</p> <p>3 District courts—Courts of limited jurisdiction</p> <p>4 Civil procedure</p> <p>5 Evidence</p> <p>6 Enforcement of judgments</p> <p>7 Special proceedings and actions</p> <p>8 Eminent domain</p> <p>9 Crimes and punishments</p> <p>9A Washington Criminal Code</p> <p>10 Criminal procedure</p> <p>11 Probate and trust law</p> <p>12 District courts—Civil procedure</p> <p>13 Juvenile courts and juvenile offenders</p> <p>14 Aeronautics</p> <p>Agriculture</p> <p>15 Agriculture and marketing</p> <p>16 Animals, estrays, brands, and fences</p> <p>17 Weeds, rodents, and pests</p> <p>Businesses and professions</p> <p>18 Businesses and professions</p> <p>19 Business regulations—Miscellaneous</p> <p>20 Commission merchants—Agricultural products</p> <p>21 Securities and investments</p> <p>22 Warehousing and deposits</p> <p>Corporations, associations, and partnerships</p> <p>23 Corporations and associations (Profit)</p> <p>23B Washington business corporation act</p> <p>24 Corporations and associations (Nonprofit)</p> <p>25 Partnerships</p> <p>26 Domestic relations</p> <p>Education</p> <p>27 Libraries, museums, and historical activities</p> <p>28A Common school provisions</p> <p>28B Higher education</p> <p>28C Vocational education</p> <p>28D Education</p> <p>29 Elections</p> <p>Financial institutions</p> <p>30 Banks and trust companies</p> <p>31 Miscellaneous loan agencies</p> <p>32 Mutual savings banks</p> <p>33 Savings and loan associations</p> <p>Government</p> <p>34 Administrative law</p> <p>35 Cities and towns</p> <p>35A Optional Municipal Code</p> <p>36 Counties</p> <p>37 Federal areas—Indians</p> <p>38 Militia and military affairs</p> <p>39 Public contracts and indebtedness</p> <p>40 Public documents, records, and publications</p> <p>41 Public employment, civil service, and pensions</p> <p>42 Public officers and agencies</p> <p>43 State government—Executive</p> <p>44 State government—Legislative</p> <p>45 Townships</p>	<p>Highways and motor vehicles</p> <p>46 Motor vehicles</p> <p>47 Public highways and transportation</p> <p>48 Insurance</p> <p>Labor</p> <p>49 Labor regulations</p> <p>50 Unemployment compensation</p> <p>51 Industrial insurance</p> <p>Local service districts</p> <p>52 Fire protection districts</p> <p>53 Port districts</p> <p>54 Public utility districts</p> <p>55 Sanitary districts</p> <p>56 Sewer districts</p> <p>57 Water districts</p> <p>Property rights and incidents</p> <p>58 Boundaries and plats</p> <p>59 Landlord and tenant</p> <p>60 Liens</p> <p>61 Mortgages, deeds of trust, and real estate contracts</p> <p>62A Uniform Commercial Code</p> <p>63 Personal property</p> <p>64 Real property and conveyances</p> <p>65 Recording, registration, and legal publication</p> <p>Public health, safety, and welfare</p> <p>66 Alcoholic beverage control</p> <p>67 Sports and recreation—Convention facilities</p> <p>68 Cemeteries, morgues, and human remains</p> <p>69 Food, drugs, cosmetics, and poisons</p> <p>70 Public health and safety</p> <p>71 Mental illness</p> <p>71A Developmental disabilities</p> <p>72 State institutions</p> <p>73 Veterans and veterans' affairs</p> <p>74 Public assistance</p> <p>Public resources</p> <p>75 Food fish and shellfish</p> <p>76 Forests and forest products</p> <p>77 Game and game fish</p> <p>78 Mines, minerals, and petroleum</p> <p>79 Public lands</p> <p>Public service</p> <p>80 Public utilities</p> <p>81 Transportation</p> <p>Taxation</p> <p>82 Excise taxes</p> <p>83 Estate taxation</p> <p>84 Property taxes</p> <p>Waters</p> <p>85 Diking and drainage</p> <p>86 Flood control</p> <p>87 Irrigation</p> <p>88 Navigation and harbor improvements</p> <p>89 Reclamation, soil conservation, and land settlement</p> <p>90 Water rights—Environment</p> <p>91 Waterways</p>
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Title 75

FOOD FISH AND SHELLFISH

Chapters

- 75.08 Administration.**
- 75.10 Enforcement—Penalties.**
- 75.12 Unlawful acts.**
- 75.20 Construction projects in state waters.**
- 75.24 Shellfish.**
- 75.25 Recreational licenses.**
- 75.28 Commercial licenses.**
- 75.30 License limitation programs.**
- 75.40 Compacts.**
- 75.44 Program to purchase fishing vessels and licenses.**
- 75.48 Salmon enhancement facilities—Bond issue.**
- 75.50 Salmon enhancement program.**
- 75.52 Volunteer cooperative fish and wildlife enhancement program.**
- 75.54 Recreational salmon and marine fish enhancement program.**
- 75.56 Salmon and steelhead trout—Management of resources.**
- 75.58 Aquaculture disease control.**
- 75.98 Construction.**

Development of intensive management plan for geoducks: RCW 79.96.906.

Halibut—Misbranding by failure to show proper name: RCW 69.04.315.

Hood Canal bridge, public sport fishing from: RCW 47.56.366.

Infractions: Chapter 7.84 RCW.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

Measurement of fish and fish products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Shellfish protection districts: Chapter 90.72 RCW.

Wildlife and recreation lands; funding of maintenance and operation: Chapter 43.98B RCW.

Chapter 75.08 ADMINISTRATION

Sections

- 75.08.010 Fisheries Code.
- 75.08.011 Definitions.
- 75.08.012 Mandate of the department.
- 75.08.013 Findings and intent.
- 75.08.014 Authority of director to administer department—Qualifications of director.
- 75.08.020 Director—Research—Reports.
- 75.08.025 Agreements with department of defense.
- 75.08.035 Senior environmental corps—Department powers and duties.
- 75.08.040 Acquisition, use, and management of lands, water rights, rights of way, and personal property.
- 75.08.045 Acceptance of funds or property for damage claims or conservation of fish resources.
- 75.08.047 Fish hatcheries—Volunteer group projects.
- 75.08.055 Agreements with United States to protect Columbia River fish—Fish cultural stations and protective devices.
- 75.08.058 Fish and wildlife harvest in federal exclusive economic zone—Rules.

- 75.08.065 Contracts and agreements for propagation of food fish or shellfish.
- 75.08.070 Territorial authority of commission—Adoption of federal regulations and rules of fisheries commissions and compacts.
- 75.08.080 Scope of commission's authority to adopt rules—Application to private tideland owners or lessees of the state.
- 75.08.090 Adoption and certification of rules.
- 75.08.110 Unofficial printings of laws or rules—Approval required.
- 75.08.120 Commission may designate fishing areas.
- 75.08.160 Right of entry—Aircraft operated by department.
- 75.08.206 Fisheries patrol officer compensation insurance—Medical aid.
- 75.08.208 Fisheries patrol officers—Relieved from active duty when injured—Compensation.
- 75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts.
- 75.08.235 Informational materials—Fee—Disposition of money collected.
- 75.08.245 Sale of surplus salmon eggs.
- 75.08.255 Director may take or sell fish or shellfish—Restrictions on sale of salmon.
- 75.08.265 Salmon fishing by Wanapum (Sokulk) Indians.
- 75.08.274 Taking food fish for propagation or scientific purposes—Permit required.
- 75.08.285 Prevention and suppression of diseases and pests.
- 75.08.295 Planting food fish or shellfish—Permit required.
- 75.08.300 Release and recapture of salmon or steelhead unlawful—Exception—Penalty.
- 75.08.400 Legislative finding.
- 75.08.410 Director's determination of salmon production costs.
- 75.08.420 State purchase of private salmon smolts.
- 75.08.430 State purchase of private salmon smolts—Bids.
- 75.08.440 State purchase of private salmon smolts—Private ocean ranching not authorized.
- 75.08.450 State purchase of private salmon smolts—Availability of excess salmon eggs.
- 75.08.460 Recreational fishery enhancement plan—Progress reports.
- 75.08.500 Chinook and coho salmon—External marking of hatchery-produced fish—Findings.
- 75.08.510 Chinook and coho salmon—External marking of hatchery-produced fish—Program.
- 75.08.520 Chinook and coho salmon—External marking of hatchery-produced fish—Rules.

Agricultural pesticide advisory board, departmental representation: RCW 17.21.230.

Energy facility site evaluation council, director a member: RCW 80.50.030.

Fisheries laboratory, appropriation: RCW 79.24.320.

Interagency committee for outdoor recreation, director member of: RCW 43.99.110.

Minimum flows and levels—Departmental authority exclusive—Other recommendations considered: RCW 90.03.247.

75.08.010 Fisheries Code. This title is known and may be cited as the "Fisheries Code of the State of Washington." [1983 1st ex.s. c 46 § 2; 1955 c 12 § 75.08.010. Prior: 1949 c 112 § 2; Rem. Supp. 1949 § 5780-200.]

75.08.011 Definitions. As used in this title or rules of the department, unless the context clearly requires otherwise:

(1) "Commission" means the fish and wildlife commission.

(2) "Director" means the director of fish and wildlife.

(3) "Department" means the department of fish and wildlife.

(4) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations, including corporations and partnerships.

(5) "Fisheries patrol officer" means a person appointed and commissioned by the commission, with authority to enforce this title, rules of the department, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

(6) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To fish," "to harvest," and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(8) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(9) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Resident" means a person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state.

(12) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(13) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that have been classified and that shall not be fished for except as authorized by rule of the commission. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(14) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(15) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(16) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(17) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(18) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(19) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(20) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful fishing, taking, or possession of food fish or shellfish. "Open season" includes the first and last days of the established time.

(21) "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.

(22) "Limited-entry license" means a license subject to a license limitation program established in chapter 75.30 RCW.

(23) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1996 c 267 § 2; 1995 1st sp.s. c 2 § 6 (Referendum Bill No. 45, approved November 7, 1995); 1994 c 255 § 2. Prior: 1993 sp.s. c 2 § 20; 1993 c 340 § 47; prior: 1990 c 63 § 6; 1990 c 35 § 3; 1989 c 218 § 1; 1983 1st ex.s. c 46 § 4; 1975 1st ex.s. c 152 § 2; 1955 c 12 § 75.04.010; prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part. Formerly RCW 75.04.010.]

Intent—1996 c 267: "It is the intent of this legislation to begin to make the statutory changes required by the fish and wildlife commission in order to successfully implement Referendum Bill No. 45." [1996 c 267 § 1.]

Effective date—1996 c 267: "This act shall take effect July 1, 1996." [1996 c 267 § 36.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Intent—1990 c 35: See note following RCW 75.25.200.

75.08.012 Mandate of the department. The department shall preserve, protect, perpetuate and manage the food fish and shellfish in state waters and offshore waters.

The department shall conserve the food fish and shellfish resources in a manner that does not impair the resource. In a manner consistent with this goal, the department shall seek to maintain the economic well-being and stability of the fishing industry in the state. The department shall promote orderly fisheries and shall enhance and improve recreational and commercial fishing in this state. [1983 1st ex.s. c 46 § 5; 1975 1st ex.s. c 183 § 1; 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. Formerly RCW 43.25.020.]

State policy regarding improvement of recreational salmon fishing: See note following RCW 75.28.095.

75.08.013 Findings and intent. The legislature supports the recommendations of the state fish and wildlife commission with regard to the commission's responsibilities in the merged department of fish and wildlife. It is the intent of the legislature that, beginning July 1, 1996, the commission assume regulatory authority for food fish and shellfish in addition to its existing authority for game fish and wildlife. It is also the intent of the legislature to provide to the commission the authority to review and approve department agreements, to review and approve the department's budget proposals, to adopt rules for the department, and to select commission staff and the director of the department.

The legislature finds that all fish, shellfish, and wildlife species should be managed under a single comprehensive set of goals, policies, and objectives, and that the decision-making authority should rest with the fish and wildlife commission. The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision making. [1995 1st sp.s. c 2 § 1 (Referendum Bill No. 45, approved November 7, 1995).]

Referral to electorate—1995 1st sp.s. c 2: "This act shall be submitted to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof." [1995 1st sp.s. c 2 § 46.] Referendum Bill No. 45 was approved by the electorate at the November 7, 1995, election.

75.08.014 Authority of director to administer department—Qualifications of director. The director shall supervise the administration and operation of the department and perform the duties prescribed by law and delegated by the commission. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries and wildlife resources and of the commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. [1995 1st sp.s. c 2 § 22 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 21; 1983 1st ex.s. c 46 § 6; 1953 c 207 § 10. Prior: (i) 1933 c 3 § 5; 1921 c 7 §

116; RRS § 10874. (ii) 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. (iii) 1949 c 112 § 5; Rem. Supp. 1949 § 5780-204. Formerly RCW 43.25.010.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.08.020 Director—Research—Reports. (1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report to the governor on the operation of the department and the statistics of the fishing industry.

(3) Subject to RCW 40.07.040, the director shall provide a comprehensive biennial report of all departmental operations to the chairs of the committees on natural resources and ways and means of the senate and house of representatives, including one copy to the staff of each of the committees, to reflect the previous fiscal period. The format of the report shall be similar to reports issued by the department from 1964-1970 and 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, 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 resource and its recreational, commercial, and tribal utilization. The report shall be given to the house and senate committees on ways and means and the house and senate committees on natural resources and shall be made available to the public. [1988 c 36 § 31; 1987 c 505 § 71; 1985 c 208 § 1; 1985 c 93 § 1; 1983 1st ex.s. c 46 § 7; 1977 c 75 § 87; 1955 c 12 § 75.08.020. Prior: 1949 c 112 § 7(3), (6), (7); Rem. Supp. 1949 § 5780-206 (3), (6), (7).]

Director of fish and wildlife to develop proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers: RCW 77.04.100.

75.08.025 Agreements with department of defense. The commission may negotiate agreements with the United States department of defense to coordinate fishing in state waters over which the department of defense has assumed control. [1995 1st sp.s. c 2 § 7 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 8; 1955 c 12 § 75.08.025. Prior: 1953 c 207 § 11.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.035 Senior environmental corps—Department powers and duties. (1) The department shall have the following powers and duties in carrying out its responsibilities for the senior environmental corps created under RCW 43.63A.247:

Appoint a representative to the coordinating council;
Develop project proposals;

Administer project activities within the agency;

Develop appropriate procedures for the use of volunteers;

Provide project orientation, technical training, safety training, equipment, and supplies to carry out project activities;

Maintain project records and provide project reports;

Apply for and accept grants or contributions for corps approved projects; and

With the approval of the council, enter into memoranda of understanding and cooperative agreements with federal, state, and local agencies to carry out corps approved projects.

(2) The department shall not use corps volunteers to displace currently employed workers. [1993 sp.s. c 2 § 22; 1992 c 63 § 11.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1992 c 63: See note following RCW 43.63A.240.

75.08.040 Acquisition, use, and management of lands, water rights, rights of way, and personal property. The commission may acquire by gift, easement, purchase, lease, or condemnation lands, water rights, and rights of way, and construct and maintain necessary facilities for purposes consistent with this title.

The commission may sell, lease, convey, or grant concessions upon real or personal property under the control of the department. [1995 1st sp.s. c 2 § 23 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 9; 1955 c 212 § 1; 1955 c 12 § 75.08.040. Prior: 1949 c 112 § 7(2); Rem. Supp. 1949 § 5780-206(2).]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Department of fish and wildlife authorized to establish small works roster of public works contractors: RCW 39.04.150.

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.94.390, 79.94.400.

75.08.045 Acceptance of funds or property for damage claims or conservation of fish resources. The commission may accept money or real property from persons under conditions requiring the use of the property or money for the protection, rehabilitation, preservation, or conservation of the state food fish and shellfish resources, or in settlement of claims for damages to food fish and shellfish resources. The commission shall only accept real property useful for the protection, rehabilitation, preservation, or conservation of these fisheries resources. [1995 1st sp.s. c 2 § 24 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 11; 1955 c 12 § 75.16.050. Prior: 1949 c 112 § 51; Rem. Supp. 1949 § 5780-325. Formerly RCW 75.16.050.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.047 Fish hatcheries—Volunteer group projects. The manager of a state fish hatchery operated by the department of fish and wildlife may allow nonprofit volunteer groups affiliated with the hatchery to undertake projects to raise donations, gifts, and grants that enhance support for the hatchery or activities in the surrounding watershed that benefit the hatchery. The manager may provide agency personnel and services, if available, to assist in the projects and may allow the volunteer groups to conduct activities on the grounds of the hatchery.

The director of the department of fish and wildlife shall encourage and facilitate arrangements between hatchery managers and nonprofit volunteer groups and may establish guidelines for such arrangements. [1995 c 224 § 1.]

75.08.055 Agreements with United States to protect Columbia River fish—Fish cultural stations and protective devices. (1) The commission may enter into agreements with and receive funds from the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions.

(2) The commission and the department may acquire by gift, purchase, lease, easement, or condemnation the use of lands where the construction or improvement is to be carried on by the United States. [1995 1st sp.s. c 2 § 8 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 23; 1987 c 506 § 94; 1983 1st ex.s. c 46 § 12; 1955 c 12 § 75.16.060. Prior: 1949 c 112 § 52; Rem. Supp. 1949 § 5780-326. Formerly RCW 75.16.060.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

75.08.058 Fish and wildlife harvest in federal exclusive economic zone—Rules. The commission may adopt rules pertaining to harvest of fish and wildlife in the federal exclusive economic zone by vessels or individuals registered or licensed under the laws of this state. [1995 1st sp.s. c 2 § 9 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 99.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100: See RCW 75.54.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.08.065 Contracts and agreements for propagation of food fish or shellfish. (1) The director may enter into contracts and agreements with a person to secure food fish or shellfish or for the construction, operation, and

maintenance of facilities for the propagation of food fish or shellfish.

(2) The director may enter into contracts and agreements to procure from private aquaculturists food fish or shellfish with which to stock state waters. [1985 c 458 § 7; 1983 1st ex.s. c 46 § 13; 1955 c 12 § 75.16.070. Prior: 1949 c 112 § 53; Rem. Supp. 1949 § 5780-327. Formerly RCW 75.16.070.]

Severability—1985 c 458: See RCW 75.50.900.

75.08.070 Territorial authority of commission—Adoption of federal regulations and rules of fisheries commissions and compacts. Consistent with federal law, the commission's authority extends to all areas and waters within the territorial boundaries of the state, to the offshore waters, and to the concurrent waters of the Columbia river.

Consistent with federal law, the commission's authority extends to fishing in offshore waters by residents of this state.

The commission may adopt rules consistent with the regulations adopted by the United States department of commerce for the offshore waters. The commission may adopt rules consistent with the recommendations or regulations of the Pacific marine fisheries commission, Columbia river compact, the Pacific salmon commission as provided in chapter 75.40 RCW, or the international Pacific halibut commission. [1995 1st sp.s. c 2 § 10 (Referendum Bill No. 45, approved November 7, 1995); 1989 c 130 § 1; 1983 1st ex.s. c 46 § 14; 1955 c 12 § 75.08.070. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.080 Scope of commission's authority to adopt rules—Application to private tideland owners or lessees of the state. (1) The commission may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of food fish or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of food fish or shellfish is lawful or unlawful.

(c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take food fish or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the possession, disposal, landing, and sale of food fish or shellfish within the state, whether acquired within or without the state.

(e) Regulating the prevention and suppression of diseases and pests affecting food fish or shellfish.

(f) Regulating the size, sex, species, and quantities of food fish or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishermen, dealers, boathouses, or processors of food fish or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of food fish and shellfish that may be used for purposes other than human consumption.

(j) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1) (a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

"Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products. [1995 1st sp.s. c 2 § 11 (Referendum Bill No. 45, approved November 7, 1995); 1993 c 117 § 1; 1985 c 457 § 17; 1983 1st ex.s. c 46 § 15; 1980 c 55 § 1; 1955 c 12 § 75.08.080. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.090 Adoption and certification of rules. (1) Rules of the commission shall be adopted by the commission or a designee in accordance with chapter 34.05 RCW.

(2) Rules of the commission shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the commission or a designee certifying that the rule has been lawfully adopted and the affidavit is prima facie evidence of the adoption of the rule.

(3) The commission may designate department employees to act on the commission's behalf in the adoption and certification of rules. [1995 1st sp.s. c 2 § 12 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 16; 1973 c 93 § 1; 1955 c 12 § 75.08.090. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.110 Unofficial printings of laws or rules—Approval required. Provisions of this title or rules of the commission shall not be printed in a pamphlet unless the pamphlet is clearly marked as an unofficial version. This section does not apply to printings approved by the commission. [1995 1st sp.s. c 2 § 13 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 17; 1955 c 12 § 75.08.110. Prior: 1949 c 112 § 16; Rem. Supp. 1949 § 5780-215.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.120 Commission may designate fishing areas. The commission may designate the boundaries of fishing

areas by driving piling or by establishing monuments or by description of landmarks or section lines and directional headings. [1995 1st sp.s. c 2 § 14 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 18; 1955 c 12 § 75.08.120. Prior: 1949 c 112 § 10; Rem. Supp. 1949 § 5780-209.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.160 Right of entry—Aircraft operated by department. The director, fisheries patrol officers, ex officio fisheries patrol officers, and department employees may enter upon any land or waters and remain there while performing their duties without liability for trespass.

It is lawful for aircraft operated by the department to land and take off from the beaches or waters of the state. It is unlawful for a person to interfere with the operation of these aircraft. [1983 1st ex.s. c 46 § 19; 1955 c 12 § 75.08.160. Prior: 1949 c 112 § 13; Rem. Supp. 1949 § 5780-212.]

75.08.206 Fisheries patrol officer compensation insurance—Medical aid. The director shall provide compensation insurance for fisheries patrol officers, insuring these employees against injury or death in the performance of enforcement duties not covered under the workers' compensation act of the state. The beneficiaries and the compensation and benefits under the compensation insurance shall be the same as provided in chapter 51.32 RCW, and the compensation insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020. [1983 1st ex.s. c 46 § 20; 1971 ex.s. c 289 § 73; 1953 c 207 § 14. Formerly RCW 43.25.047.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

75.08.208 Fisheries patrol officers—Relieved from active duty when injured—Compensation. The director shall relieve from active duty fisheries patrol officers who are injured in the performance of their official duties to such an extent as to be incapable of active service. While relieved from active duty, the employees shall receive one-half of their salary less any compensation received through the provisions of RCW 41.40.200, 41.40.220, and 75.08.206. [1983 1st ex.s. c 46 § 22; 1957 c 216 § 1. Formerly RCW 75.08.024.]

75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts. (1) Except as provided in this section, state and county officers receiving the following moneys shall deposit them in the state general fund:

- (a) The sale of licenses required under this title;
- (b) The sale of property seized or confiscated under this title;
- (c) Fines and forfeitures collected under this title;
- (d) The sale of real or personal property held for department purposes;

- (e) Rentals or concessions of the department;
- (f) Moneys received for damages to food fish, shellfish or department property; and
- (g) Gifts.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the department shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the department of general administration shall be deposited in the regional fisheries enhancement group account established in RCW 75.50.100.

(6) Moneys received by the commission under RCW 75.08.045, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement. [1996 c 267 § 3; 1995 c 367 § 11; 1993 c 340 § 48; 1989 c 176 § 4; 1987 c 202 § 230; 1984 c 258 § 332; 1983 1st ex.s. c 46 § 23; 1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s. c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

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

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

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

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.08.235 Informational materials—Fee—Disposition of money collected. The director may collect moneys to recover the reasonable costs of drafting and publishing informational materials, except regulation pamphlets, relating to food fish and shellfish under the jurisdiction

tion of the department. "Reasonable costs" shall include costs of drafting, printing, distribution, and postage.

Moneys collected by the director under this section shall be deposited in the state general fund. [1992 c 13 § 2.]

Intent—1992 c 13: "It is the intent of the legislature to promote the distribution of public information concerning the food fish and shellfish resources in this state, and to recover the costs of drafting and publishing of informational materials to the extent reasonably possible through the sale of such materials, except for regulation pamphlets, which should continue to be distributed at no charge." [1992 c 13 § 1.]

75.08.245 Sale of surplus salmon eggs. The department may supply, at a reasonable charge, surplus salmon eggs to a person for use in the cultivation of salmon. The department shall not intentionally create a surplus of salmon to provide eggs for sale. The department shall only sell salmon eggs from stocks that are not suitable for salmon population rehabilitation or enhancement in state waters in Washington. All sales or transfers shall be consistent with the department's egg transfer and aquaculture disease control regulations as now existing or hereafter amended. Prior to department determination that eggs of a salmon stock are surplus and available for sale, the department shall assess the productivity of each watershed that is suitable for receiving eggs.

The salmon enhancement advisory council, created in *RCW 75.48.120, shall consider egg sales at each meeting. [1988 c 115 § 1; 1983 1st ex.s. c 46 § 25; 1974 ex.s. c 23 § 1; 1971 c 35 § 4. Formerly RCW 75.16.120.]

*Reviser's note: RCW 75.48.120 expired December 31, 1989.

Sale of surplus salmon eggs and carcasses by volunteer cooperative fish projects: RCW 75.52.035.

75.08.255 Director may take or sell fish or shellfish—Restrictions on sale of salmon. (1) The director may take or remove any species of fish or shellfish from the waters or beaches of the state.

(2) The director may sell food fish or shellfish caught or taken during department test fishing operations.

(3) The director shall not sell inedible salmon for human consumption. Salmon and carcasses may be given to state institutions or schools or to economically depressed people, unless the salmon are unfit for human consumption. Salmon not fit for human consumption may be sold by the director for animal food, fish food, or for industrial purposes.

(4) In the sale of surplus salmon from state hatcheries, the division of purchasing shall require that a portion of the surplus salmon be processed and returned to the state by the purchaser. The processed salmon shall be fit for human consumption and in a form suitable for distribution to individuals. The division of purchasing shall establish the required percentage at a level that does not discourage competitive bidding for the surplus salmon. The measure of the percentage is the combined value of all of the surplus salmon sold. The department of social and health services shall distribute the processed salmon to economically depressed individuals and state institutions pursuant to rules adopted by the department of social and health services. [1990 c 36 § 1; 1985 c 28 § 1; 1983 1st ex.s. c 46 § 26; 1979 c 141 § 382; 1969 ex.s. c 16 § 2; 1965 ex.s. c 72 § 1; 1955 c 12 § 75.12.130. Prior: 1949 c 112 § 41; Rem. Supp. 1949 § 5780-315. Formerly RCW 75.12.130.]

75.08.265 Salmon fishing by Wanapum (Sokulk) Indians. The director may issue permits to members of the Wanapum band of Indians to take salmon for ceremonial and subsistence purposes. The department shall establish the areas in which the permits are valid and shall regulate the times for and manner of taking the salmon. This section does not create a right to fish commercially. [1983 1st ex.s. c 46 § 27; 1981 c 251 § 2. Formerly RCW 75.12.310.]

Legislative findings—1981 c 251: "The legislature finds that the Sokulk Indians, otherwise known as the Wanapum band of Indians, have made a significant effort to maintain their traditional tribal culture, including the activity of taking salmon for ceremonial and subsistence purposes. The legislature further finds that previously the state has encouraged ceremonial and subsistence fishing by the Wanapums by chapter 210, Laws of 1939 and other permission. Therefore, the intent of the legislature in enacting RCW 75.08.265 is to recognize the cultural importance of salmon fishing to only the Wanapum Indians by authorizing these people a ceremonial and subsistence fishery, while also preserving the state's ability to conserve and manage the salmon resource." [1983 1st ex.s. c 46 § 62; 1981 c 251 § 1. Formerly RCW 75.12.300.]

75.08.274 Taking food fish for propagation or scientific purposes—Permit required. Except by permit of the commission, it is unlawful to take food fish or shellfish for propagation or scientific purposes within state waters. [1995 1st sp.s. c 2 § 15 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 28; 1971 c 35 § 1; 1955 c 12 § 75.16.010. Prior: 1949 c 112 § 42; Rem. Supp. 1949 § 5780-316. Formerly RCW 75.16.010.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.285 Prevention and suppression of diseases and pests. The commission may prohibit the introduction, transportation or transplanting of food fish, shellfish, organisms, material, or other equipment which in the commission's judgment may transmit any disease or pests affecting food fish or shellfish. [1995 1st sp.s. c 2 § 16 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 29; 1955 c 12 § 75.16.030. Prior: 1949 c 112 § 43; Rem. Supp. 1949 § 5780-317. Formerly RCW 75.16.030.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.295 Planting food fish or shellfish—Permit required. Except by permit of the commission, it is unlawful to release, plant, or place food fish or shellfish in state waters. [1995 1st sp.s. c 2 § 17 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 30; 1955 c 12 § 75.16.020. Prior: 1949 c 112 § 40; Rem. Supp. 1949 § 5780-314. Formerly RCW 75.16.020.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.300 Release and recapture of salmon or steelhead unlawful—Exception—Penalty. (1) It is unlawful for any person other than the United States, an Indian

tribe recognized as such by the federal government, the state, a subdivision of the state, or a municipal corporation or an agency of such a unit of government to release salmon or steelhead trout into the public waters of the state and subsequently to recapture and commercially harvest such salmon or trout. This section shall not prevent any person from rearing salmon or steelhead trout in pens or in a confined area under circumstances where the salmon or steelhead trout are confined and never permitted to swim freely in open water.

(2) A violation of this section constitutes a gross misdemeanor. [1985 c 457 § 12.]

75.08.400 Legislative finding. The legislature finds that:

(1) The fishery resources of Washington are critical to the social and economic needs of the citizens of the state;

(2) Salmon production is dependent on both wild and artificial production;

(3) The department is directed to enhance Washington's salmon runs; and

(4) Full utilization of the state's salmon rearing facilities is necessary to enhance commercial and recreational fisheries. [1993 sp.s. c 2 § 24; 1989 c 336 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1989 c 336: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 336 § 7.]

75.08.410 Director's determination of salmon production costs. The director shall determine the cost of operating all state-funded salmon production facilities at full capacity and shall provide this information with the department's biennial budget request. [1989 c 336 § 2.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.420 State purchase of private salmon smolts. The director may contract with cooperatives or private aquaculturists for the purchase of quality salmon smolts for release into public waters if all department fish rearing facilities are operating at full capacity. The intent of cooperative and private sector contracting is to explore the opportunities of cooperatively producing more salmon for the public fisheries without incurring additional capital expense for the department. [1989 c 336 § 3.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.430 State purchase of private salmon smolts—Bids. If the director elects to contract with cooperatives or private aquaculturists for the purpose of purchasing quality salmon smolts, contracting shall be done by a competitive bid process. In awarding contracts to private contractors, the director shall give preference to nonprofit corporations. The director shall establish the criteria for the contract, which shall include but not be limited to species, size of smolt, stock composition, quantity, quality, rearing location, release location, and other pertinent factors. [1989 c 336 § 4.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.440 State purchase of private salmon smolts—Private ocean ranching not authorized. Nothing in chapter 336, Laws of 1989 shall authorize the practice of private ocean ranching. Privately contracted smolts become the property of the state at the time of release. [1989 c 336 § 5.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.450 State purchase of private salmon smolts—Availability of excess salmon eggs. The department may make available to private contractors salmon eggs in excess of department hatchery needs for the purpose of contract rearing to release the smolts into public waters. The priority of providing eggs to contract rearing shall be higher than providing eggs to aquaculture purposes which are not destined for release into Washington public waters. [1989 c 336 § 6.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.460 Recreational fishery enhancement plan—Progress reports. The commission shall report to the governor and the appropriate legislative committees regarding its progress on the recreational fishery enhancement plan giving the following minimum information:

(1) By July 1, 1990, and by July 1st each succeeding year a report shall include:

(a) Progress on all programs within the plan that are referred to as already underway; and

(b) Specific anticipated needs for additional FTE's, additional capital funds or other needed resources, including whether or not current budgetary dollars are sufficient.

(2) By November 1, 1990, and by November 1st each succeeding year a report shall provide the many specificities omitted from the recreational fishery enhancement plan. They include but are not limited to the following:

(a) The name of the person assigned the responsibility and accountability for over-all management of the recreational fishery enhancement plan.

(b) The name of the person responsible and accountable for management of each regional program.

(c) The anticipated yearly costs related to each regional program.

(d) The specific dates relative to attainment of the recreational fishery enhancement plan goals, including a time-line program by region.

(e) Criteria used for measurement of the successful attainment of the recreational fishery enhancement plan. [1995 1st sp.s. c 2 § 18 (Referendum Bill No. 45, approved November 7, 1995); 1990 c 91 § 2.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Purpose of plan—1990 c 91: "The legislature is aware that the Washington state department of fisheries introduced a broad new program titled "The Recreational Fishery Enhancement Plan" in October of 1989. The declared purpose of the plan is to emphasize recreational opportunities and develop the plan with emphasis on recreational salmon fishing.

The plan boldly adopts, as its chief goal, Governor Gardner's personal objective: Make Washington the recreational fishing capital of the nation. The director states this will be accomplished through a series of regional programs. The legislature commends the director for his recreational fishery

enhancement plan and the various concepts it contains to meet the need for recreational emphasis.

The legislature recognizes that any plan such as the recreational fishery enhancement plan requires creative thinking, innovation, commitment, allocation of appropriate resources, and risk taking. Certain failures may occur in aspects of the programs but only through such far-sighted acceptance of risks will success be achieved.

Because of the importance of this effort to the state of Washington, the legislature and the thousands of Washington recreational fishers must be kept informed as to the progress and success of the recreational fishery enhancement plan." [1990 c 91 § 1.]

75.08.500 Chinook and coho salmon—External marking of hatchery-produced fish—Findings. The legislature declares that the state has a vital interest in the continuation of recreational fisheries for chinook salmon and coho salmon in mixed stock areas, and that the harvest of hatchery origin salmon should be encouraged while wild salmon should be afforded additional protection when required. A program of selective harvest shall be developed utilizing hatchery salmon that are externally marked in a conspicuous manner, regulations that promote the unharmed release of unmarked fish, when and where appropriate, and a public information program that educates the public about the need to protect depressed stocks of wild salmon.

The legislature further declares that the establishment of other incentives for commercial fishing and fish processing in Washington will complement the program of selective harvest in mixed stock fisheries anticipated by this legislation. [1995 c 372 § 1.]

75.08.510 Chinook and coho salmon—External marking of hatchery-produced fish—Program. The department shall mark appropriate coho salmon that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers for the purpose of maximized catch while sustaining wild and hatchery reproduction.

The department shall mark all appropriate chinook salmon targeted for contribution to the Washington catch that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers.

The goal of the marking program is the annual marking by June 30, 1997, of all appropriate hatchery origin chinook and coho salmon produced by the department with marking to begin with the 1994 Puget Sound coho brood. The department may experiment with different methods for marking hatchery salmon with the primary objective of maximum survival of hatchery marked fish, maximum contribution to fisheries, and minimum cost consistent with the other goals.

The department shall coordinate with other entities that are producing hatchery chinook and coho salmon for release into public waters to enable the broadest application of the marking program to all hatchery produced chinook and coho salmon. The ultimate goal of the program is the coast-wide marking of appropriate hatchery origin chinook and coho salmon, and the protection of all wild chinook and coho salmon, where appropriate. [1995 c 372 § 2.]

75.08.520 Chinook and coho salmon—External marking of hatchery-produced fish—Rules. The department shall adopt rules to control the mixed stock chinook and coho fisheries of the state so as to sustain healthy stocks of wild salmon, allow the maximum survival of wild salmon, allow for spatially separated fisheries that target on hatchery stocks, foster the best techniques for releasing wild chinook and coho salmon, and contribute to the economic viability of the fishing businesses of the state. [1995 c 372 § 3.]

Chapter 75.10

ENFORCEMENT—PENALTIES

Sections

75.10.010	Enforcement of laws and rules by fisheries patrol officers.
75.10.020	Inspection, searches, and arrest without warrant.
75.10.030	Seizure of property without warrant—Deposit of cash bond in lieu.
75.10.040	Service of warrants and processes—Assistance or obstruction of fisheries patrol officers.
75.10.050	Venue for violations occurring in offshore waters.
75.10.060	Concurrent jurisdiction of courts of limited jurisdiction and superior courts.
75.10.070	Service of summons and forfeiture if unable to prosecute violator.
75.10.080	Sale or destruction of property forfeited—Notice of sale.
75.10.090	Authority to issue search warrants.
75.10.100	Authority of attorney general if prosecuting attorney defaults.
75.10.110	General penalties for violations—Seizure and forfeiture.
75.10.120	Forfeiture of license for violations.
75.10.130	Suspension of salmon licenses for repeated violations.
75.10.140	Revocation of geoduck licenses.
75.10.150	Wholesale fish dealers—Accounting of commercial harvest—Penalties.
75.10.160	Enforcement of watercraft registration and boating safety education.
75.10.170	Emerging commercial fishery—Violation of conditions or requirements.
75.10.180	Personal use violations—Penalties.
75.10.190	Commercial use violations—Penalties.
75.10.200	Miscellaneous violations—Penalties.
75.10.210	Habitual offenders—Penalties.
75.10.220	Wildlife violator compact citations and convictions.

75.10.010 Enforcement of laws and rules by fisheries patrol officers. (1) Fisheries patrol officers and ex officio fisheries patrol officers within their respective jurisdictions, shall enforce this title, rules of the department, and other statutes as prescribed by the legislature.

(2) When acting within the scope of subsection (1) of this section and when an offense occurs in the presence of the fisheries patrol officer who is not an ex officio fisheries patrol officer, the fisheries patrol officer may enforce all criminal laws of the state. The fisheries patrol officer must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a supplemental course in criminal law enforcement as approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(3) Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by a fisheries patrol officer rests with the department unless the fisheries patrol officer acts under the direction and control of another

agency or unless the liability is otherwise assumed under a written agreement between the department and another agency.

(4) Fisheries patrol officers may serve and execute warrants and processes issued by the courts.

(5) Fisheries patrol officers may enforce the provisions of RCW 79.01.805 and 79.01.810. [1996 c 267 § 4. Prior: 1993 sp.s. c 2 § 25; 1993 c 283 § 7; 1985 c 155 § 1; 1983 1st ex.s. c 46 § 32; 1980 c 78 § 133; 1955 c 12 § 75.08.150; prior: 1949 c 112 § 22; Rem. Supp. 1949 § 5780-220. Formerly RCW 75.08.150.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—1993 c 283: See note following RCW 79.01.800.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Fisheries patrol officers, duties related to sanitary control of shellfish: Chapter 69.30 RCW.

75.10.020 Inspection, searches, and arrest without warrant. (1) Fisheries patrol officers may inspect and search without warrant a person, boat, fishing equipment, vehicle, conveyance, container, or property used in catching, processing, storing, or marketing food fish or shellfish which they have reason to believe contain evidence of violations of this title or rules of the department. This authority does not extend to quarters in a boat, building, or other property used exclusively as a private domicile.

(2) Fisheries patrol officers and ex officio fisheries patrol officers may arrest without warrant a person they have reason to believe is in violation of this title or rules of the department. [1996 c 267 § 5; 1983 1st ex.s. c 46 § 33; 1955 c 12 § 75.08.170. Prior: 1949 c 112 § 19; Rem. Supp. 1949 § 5780-218. Formerly RCW 75.08.170.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.030 Seizure of property without warrant—Deposit of cash bond in lieu. (1) Fisheries patrol officers and ex officio fisheries patrol officers may seize without warrant food fish or shellfish they have reason to believe have been taken, killed, transported, or possessed in violation of this title or rule of the department and may seize without warrant boats, vehicles, gear, appliances, or other articles they have reason to believe are held with intent to violate or have been used in violation of this title or rule of the department. The articles seized shall be subject to forfeiture to the state, regardless of ownership. Articles seized may be recovered by their owner by depositing into court a cash bond equal to the value of the seized articles but not more than twenty-five thousand dollars. The cash bond is subject to forfeiture to the state in lieu of the seized article.

(2)(a) In the event of a seizure of an article under subsection (1) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. Within fifteen days following the seizure, the seizing authority shall serve notice on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or

court rule, including service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(b) If no person notifies the department in writing of the person's claim of ownership or right to possession of the articles seized under subsection (1) of this section within forty-five days of the seizure, the articles shall be deemed forfeited.

(c) If any person notifies the department in writing within forty-five days of the seizure, the person shall be afforded an opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the articles seized is more than five thousand dollars. The department hearing and any subsequent appeal shall be as provided for in Title 34 RCW. The burden of producing evidence shall be upon the person claiming to be the lawful owner or person claiming lawful right of possession of the articles seized. The department shall promptly return the seized articles to the claimant upon a determination by the director or the director's designee, an administrative law judge, or a court that the claimant is the present lawful owner or is lawfully entitled to possession of the articles seized, and that the seized articles were improperly seized.

(d)(i) No conveyance, including vessels, vehicles, or aircraft, is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.

(ii) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge nor consented to the act or omission.

(e) When seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the state general fund, as provided for in RCW 75.08.230. [1996 c 267 § 6; 1990 c 144 § 5; 1983 1st ex.s. c 46 § 34; 1955 c 12 § 75.36.010. Prior: 1949 c 112 § 76(1); Rem. Supp. 1949 § 5780-602(1). Formerly RCW 75.36.010.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.040 Service of warrants and processes—Assistance or obstruction of fisheries patrol officers. (1) Fisheries patrol officers and ex officio fisheries patrol officers may serve and execute warrants and processes issued by the courts to enforce this title and rules of the department.

(2) To enforce this title or rules of the department, fisheries patrol officers may call to their aid any equipment, boat, vehicle, or airplane, or ex officio fisheries patrol officer.

(3) It is unlawful to knowingly or willfully resist or obstruct a fisheries patrol officer in the discharge of the

officer's duties. [1996 c 267 § 7; 1983 1st ex.s. c 46 § 35; 1980 c 78 § 134; 1955 c 12 § 75.08.200. Prior: 1949 c 112 § 21; Rem. Supp. 1949 § 5780-219. Formerly RCW 75.08.200.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

75.10.050 Venue for violations occurring in offshore waters. Violations of this title or rules of the department occurring in the offshore waters may be prosecuted in a county bordering on the Pacific Ocean, or a county in which the food fish or shellfish are landed. [1996 c 267 § 8; 1983 1st ex.s. c 46 § 36; 1955 c 12 § 75.08.280. Prior: 1949 c 112 § 79; Rem. Supp. 1949 § 5780-605. Formerly RCW 75.08.280.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.060 Concurrent jurisdiction of courts of limited jurisdiction and superior courts. Courts of limited jurisdiction, as defined in RCW 3.02.010, and superior courts have concurrent jurisdiction to impose penalties and order forfeitures provided for in this title. [1983 1st ex.s. c 46 § 37; 1955 c 12 § 75.36.040. Prior: 1949 c 112 § 76(4); Rem. Supp. 1949 § 5780-602(4). Formerly RCW 75.36.040.]

75.10.070 Service of summons and forfeiture if unable to prosecute violator. If the state is unable to prosecute the person responsible for the violation for which the seizure was made, the court may forfeit the articles upon a hearing held after service of summons as provided in RCW 4.28.100 describing the articles seized. [1983 1st ex.s. c 46 § 38; 1955 c 12 § 75.36.030. Prior: 1949 c 112 § 76(3); Rem. Supp. 1949 § 5780-602(3). Formerly RCW 75.36.030.]

75.10.080 Sale or destruction of property forfeited—Notice of sale. The director may sell at public auction or destroy articles forfeited under this chapter. The time, place, and manner of sale shall be determined by the director. Notice of the time and place of sale shall be published once a week for at least two consecutive weeks prior to the sale in at least one newspaper of general circulation in the county in which the sale is to be held. [1983 1st ex.s. c 46 § 39; 1955 c 12 § 75.36.050. Prior: 1951 c 271 § 38; 1949 c 112 § 76(5); Rem. Supp. 1949 § 5780-602(5). Formerly RCW 75.36.050.]

75.10.090 Authority to issue search warrants. Upon complaint showing probable cause to believe that food fish or shellfish unlawfully caught, taken, killed, controlled, possessed, or transported is concealed or kept in a place or container, the court shall issue a search warrant and have the place or container searched for food fish or shellfish and records pertaining to the food fish or shellfish. [1983 1st ex.s. c 46 § 40; 1955 c 12 § 75.08.180. Prior: 1949 c 112 § 23; Rem. Supp. 1949 § 5780-221. Formerly RCW 75.08.180.]

75.10.100 Authority of attorney general if prosecuting attorney defaults. If the prosecuting attorney of the county in which a violation of this title or rule of the department occurs fails to file an information against the alleged violator, the attorney general upon request of the commission may file an information in the superior court of the county and prosecute the case in place of the prosecuting attorney. The commission may request prosecution by the attorney general if thirty days have passed since the commission informed the county prosecuting attorney of the alleged violation. [1996 c 267 § 9; 1983 1st ex.s. c 46 § 41; 1949 c 112 § 24; Rem. Supp. 1949 § 5780-222. Formerly RCW 75.08.275, 43.25.070.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.110 General penalties for violations—Seizure and forfeiture. (1) Unless otherwise provided for in this title, a person who violates this title or rules of the department is guilty of a gross misdemeanor, and upon a conviction thereof shall be subject to the penalties under RCW 9.92.020. Food fish or shellfish involved in the violation shall be forfeited to the state. The court may forfeit seized articles involved in the violation.

(2) The commission may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [1996 c 267 § 10; 1990 c 144 § 6; 1987 c 380 § 16; 1983 1st ex.s. c 46 § 42; 1979 ex.s. c 99 § 1; 1955 c 12 § 75.08.260. Prior: 1949 c 112 § 75; Rem. Supp. 1949 § 5780-601. Formerly RCW 75.08.260.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

75.10.120 Forfeiture of license for violations. (1) Upon conviction of a person for a violation of this title or rule of the department, in addition to the penalty imposed by law, the court may forfeit the person's license or licenses. The license or licenses shall remain forfeited pending appeal.

(2) The director may prohibit, for one year, the issuance of all commercial fishing licenses to a person convicted of two or more gross misdemeanor or class C felony violations of this title or rule of the department in a five-year period or prescribe the conditions under which the license or licenses may be issued. For purposes of this section, the term "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral of two hundred fifty dollars or more deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title or rule of the department is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1996 c 267 § 11; 1990 c 144 § 7; 1983 1st ex.s. c 46 § 43; 1979 ex.s. c 99 § 2; 1957 c 171 § 5; 1955 c 12 § 75.28.380. Prior: 1949 c 112 § 77; Rem. Supp. 1949 § 5780-603. Formerly RCW 75.28.380.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.130 Suspension of salmon licenses for repeated violations. Upon two or more convictions of a person in a five-year period for violating salmon fishing rules of the department which restrict fishing times or areas, the director shall deny all salmon fishing privileges and suspend all salmon fishing licenses of that person for one year. A person may not avoid this penalty by transferring a commercial salmon fishery license.

For the purposes of this section, the term "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1996 c 267 § 12; 1983 1st ex.s. c 46 § 44; 1979 ex.s. c 99 § 3. Formerly RCW 75.28.384.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.140 Revocation of geoduck licenses. (1) In addition to the penalties prescribed in RCW 75.10.110 and 75.10.120, the director may revoke geoduck diver licenses held by a person if within a five-year period that person is convicted or has an unvacated bail forfeiture for two or more violations of this title or rules of the department relating to geoduck licensing or harvesting.

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

(3) Appeals of revocations under this section may be taken under the judicial review provisions of chapter 34.05 RCW. If the license revocation is determined to be invalid, the director shall reissue the license to that person. [1996 c 267 § 13; 1990 c 163 § 7; 1984 c 80 § 4; 1983 1st ex.s. c 46 § 45; 1979 ex.s. c 141 § 7. Formerly RCW 75.28.288.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.150 Wholesale fish dealers—Accounting of commercial harvest—Penalties. Since violation of the rules of the department relating to the accounting of the commercial harvest of food fish and shellfish result in damage to the resources of the state, liability for damage to food fish and shellfish resources is imposed on a wholesale fish dealer for violation of a provision in chapter 75.28 RCW or a rule of the department related to the accounting of the commercial harvest of food fish and shellfish and shall be for the actual damages or for damages imposed as follows:

(1) For violation of rules requiring the timely presentation to the department of documents relating to the accounting of commercial harvest, fifty dollars for each of the first fifteen documents in a series and ten dollars for each subsequent document in the same series. If documents relating to the accounting of commercial harvest of food fish and shellfish are lost or destroyed and the wholesale dealer notifies the department in writing within seven days of the loss or destruction, the director shall waive the requirement for timely presentation of the documents.

(2) For violation of rules requiring accurate and legible information relating to species, value, harvest area, or amount of harvest, twenty-five dollars for each of the first five violations of this subsection following July 28, 1985, and fifty dollars for each violation after the first five violations.

(3) For violations of rules requiring certain signatures, fifty dollars for each of the first two violations and one hundred dollars for each subsequent violation. For the purposes of this subsection, each signature is a separate requirement.

(4) For other violations of rules relating to the accounting of the commercial harvest, fifty dollars for each separate violation. [1996 c 267 § 14; 1985 c 248 § 5.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Wholesale fish dealers—Documentation of commercial harvest: RCW 75.28.315.

75.10.160 Enforcement of watercraft registration and boating safety education. Fisheries patrol officers are authorized to enforce all provisions of chapter 88.02 RCW and any rules adopted thereunder, and the provisions of RCW 43.51.400 and any rules adopted thereunder. [1989 c 393 § 16.]

Commission to adopt rules: RCW 88.12.385.

75.10.170 Emerging commercial fishery—Violation of conditions or requirements. Upon conviction of a person for violation of the conditions or requirements of an experimental fishery permit or provisions of this title or rule of the department while engaged in an emerging commercial fishery, the director may suspend or revoke the experimental fishery permit and all fishing privileges pursuant thereto or present the conditions under which the experimental fishery permit may be reissued. That suspension or revocation shall become effective on the date the director gives the notice prescribed in RCW 34.05.422(1)(c).

For the purposes of this section, the term "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral of more than two hundred fifty dollars deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1996 c 267 § 15; 1990 c 63 § 5.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Emerging commercial fishery: RCW 75.30.220.

75.10.180 Personal use violations—Penalties. Persons who fish for food fish or shellfish for personal use and violate this title or the rules of the department shall be subject to the following penalties:

(1) The following violations are infractions and are punishable under chapter 7.84 RCW:

(a) The failure to immediately record a catch of salmon or sturgeon on a catch record card;

(b) The use of barbed hooks in a barbless hook-only fishery; and

(c) Other personal use violations specified by the commission under RCW 75.10.110.

(2) The following violations are misdemeanors and are punishable under RCW 9.92.030:

(a) The retention of undersized food fish or shellfish;

(b) The retention of more food fish or shellfish than is legally allowed, but less than three times the legally allowed personal use limit;

(c) The intentional wasting of recreationally caught food fish or shellfish; and

(d) The setting or lifting of shrimp pots in Hood Canal from one hour after sunset until one hour before sunrise.

(3) The following violations are gross misdemeanors and are punishable under RCW 9.92.020:

(a) The snagging of food fish;

(b) Fishing in closed areas or during a closed season;

(c) Commingling a personal food fish catch with a commercial food fish catch;

(d) The retention of at least three times the legally allowed personal use limits of food fish or shellfish;

(e) The sale, barter, or trade of food fish or shellfish with a wholesale value of less than two hundred fifty dollars by a person who has caught the food fish or shellfish with fishing gear authorized under personal use rules or who has received the food fish or shellfish from someone who caught it with fishing gear authorized under personal use rules; and

(f) Other unclassified personal use violations of Title 75 RCW.

(4) The following violation is a class C felony and is punishable under RCW 9A.20.021(1)(c): The sale, barter, or trade of food fish or shellfish with a wholesale value of two hundred fifty dollars or more by a person who has caught the food fish or shellfish with fishing gear authorized under personal use rules or has received the food fish or shellfish from someone who caught it with fishing gear authorized under personal use rules. [1996 c 267 § 16; 1990 c 144 § 1.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.190 Commercial use violations—Penalties.

Persons who fish, buy, or sell food fish and shellfish commercially and violate this title or the rules of the department shall be subject to the following penalties:

(1) The following violations are misdemeanors and are punishable under RCW 9.92.030:

(a) The failure to complete a fish ticket with all the required information for a commercial fish or shellfish landing; and

(b) The failure to report a commercial fish catch as required by department rules.

(2) The following violations are gross misdemeanors and are punishable under RCW 9.92.020:

(a) The retention of illegal food fish or shellfish species;

(b) The wasting of commercially caught food fish or shellfish;

(c) Commingling commercial and personal use food fish or shellfish catches;

(d) The failure to comply with department rules on commercial fishing licenses;

(e) The failure to comply with department requirements on fishing gear specifications;

(f) The failure to obtain a delivery license as required by department rules;

(g) Violations of the fisheries statutes or rules by fish buyers or wholesale dealers other than violations for fish tickets under subsection (1)(a) of this section;

(h) Fishing during a closed season;

(i) Illegal geoduck harvesting off the legal harvesting tract; and

(j) Other unclassified commercial violations of Title 75 RCW.

(3) The following violations are class C felonies and are punishable under RCW 9A.20.021(1)(c):

(a) Intentionally fishing in a closed area using fishing gear not authorized under personal use regulations;

(b) Intentionally netting salmon in the Pacific Ocean;

(c) Harvesting more than one hundred pounds of geoducks outside of the boundaries of a harvest tract designated by a harvest agreement from the department of natural resources if:

(i) The harvester does not have a valid harvesting agreement from the department of natural resources; or

(ii) The harvesting is done more than one-half mile from the nearest boundary of any harvesting tract designated by a department of natural resources harvesting agreement;

(d) Unlawful participation by a non-Indian fisher with intent to profit in a treaty Indian fishery;

(e) Intentionally fishing within the closed waters of a fish hatchery;

(f) The sale, barter, or trade of food fish or shellfish with a wholesale value of two hundred fifty dollars or more by a person who does not have a valid commercial fishing license and has caught the food fish or shellfish using fishing gear not authorized under personal use rules, or has received the food fish or shellfish from someone who has caught it with fishing gear not authorized under personal use rules; and

(g) Being in possession of food fish or shellfish with a wholesale value of two hundred fifty dollars or more while using fishing gear not authorized under personal use regulations without a valid commercial fishing license. [1996 c 267 § 17; 1990 c 144 § 2.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.10.200 Miscellaneous violations—Penalties.

Persons who violate this title or the rules of the department shall be subject to the following penalties:

(1) The following violations are gross misdemeanors and are punishable under RCW 9.92.020:

(a) Violating RCW 75.20.100; and

(b) Violating department statutes that require fish screens, fish ladders, and other protective devices for fish.

(2) The following violations are a class C felony and are punishable under RCW 9A.20.021(1)(c):

(a) Discharging explosives in waters that contain adult salmon or sturgeon. However, the lawful discharge of devices for the purpose of frightening or killing marine mammals or for the lawful removal of snags or for actions approved under RCW 75.20.100 or 75.12.070(2) are exempt from this subsection; and

(b) To knowingly purchase food fish or shellfish with a wholesale value greater than two hundred fifty dollars that

were taken by methods or during times not authorized by department rules, or were taken by someone who does not have a valid commercial fishing license, a valid fish buyer's license, or a valid wholesale dealer's license, or were taken with fishing gear authorized for personal use. [1996 c 267 § 18; 1993 sp.s. c 2 § 26; 1990 c 144 § 3.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.10.210 Habitual offenders—Penalties. Persons who repeatedly demonstrate indifference and disrespect for the fisheries laws of the state shall be considered a threat to the fisheries resource. These habitual offenders shall be denied the privilege of harvesting food fish or shellfish.

The director may revoke or may prescribe conditions for issuing the personal use license or the commercial fishing license, or both, of persons who have four or more gross misdemeanors or class C felony convictions for fisheries violations within a twelve-year period. All food fish and shellfish fishing privileges shall be revoked for the same time period as a license is revoked. A revoked license shall not be reissued for a period of at least two years from the date of revocation, and shall be reissued only under the discretion of the director.

For purposes of this section, "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral of two hundred fifty dollars or more deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt for violating a provision of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1990 c 144 § 4.]

75.10.220 Wildlife violator compact citations and convictions. (1) Upon receipt of a report of failure to comply with the terms of a citation issued for a recreational violation from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.17.010, the department shall suspend the violator's recreational license privileges under this title until [there is] satisfactory evidence of compliance with the terms of the wildlife citation. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of recreational licensing privileges.

(2) Upon receipt of a report of a conviction for a recreational offense from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.17.010, the department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of recreational license privileges. [1994 c 264 § 45; 1993 c 82 § 6.]

Revoked licenses—Application—1993 c 82: See note following RCW 77.17.010.

Chapter 75.12 UNLAWFUL ACTS

Sections

- 75.12.010 Limitations on commercial fishing for salmon in Puget Sound waters.
- 75.12.015 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca.
- 75.12.020 Fishing near dams or obstructions.
- 75.12.031 Unlawful to fish in or interfere with fishways or protective devices.
- 75.12.040 Unlawful salmon fishing gear.
- 75.12.070 Molesting food fish or shellfish unlawful—Permit required for use of explosives.
- 75.12.090 Theft of food fish or shellfish—Molestation of fishing gear.
- 75.12.100 Purchase or possession of food fish or shellfish taken unlawfully.
- 75.12.115 Commercial fishing for crayfish unlawful—Exceptions.
- 75.12.120 Waste of food fish or shellfish unlawful—Exception—Timely processing required.
- 75.12.125 Commingling of commercial and personal use food fish or shellfish unlawful.
- 75.12.127 Vessels—Charter or recreational and commercial fishing on same day.
- 75.12.132 Commercial net fishing for salmon in tributaries of Columbia river.
- 75.12.140 Reef net salmon fishing gear—Reef net areas specified.
- 75.12.155 Unauthorized fishing vessels entering state waters.
- 75.12.210 Limitation on salmon fishing gear in Pacific Ocean.
- 75.12.230 Possession or transportation in Pacific Ocean of salmon taken by other than troll lines or angling gear.
- 75.12.320 Participation of non-Indians in Indian fishery forbidden—Exceptions, definitions, penalty.
- 75.12.390 Bottom trawling unlawful—Areas specified.
- 75.12.400 Unlawful to lift or set shellfish pots in Hood Canal at night.
- 75.12.410 Damaging department signs.
- 75.12.420 Failure to make required reports and returns.
- 75.12.430 False or misleading information.
- 75.12.440 Hood Canal shrimp—Limitation on number of shrimp pots.
- 75.12.650 Commercial salmon fishing—Authorized gear.

75.12.010 Limitations on commercial fishing for salmon in Puget Sound waters. (1) Except as provided in this section, it is unlawful to fish commercially for salmon within the waters described in subsection (2) of this section.

(2) All waters east and south of a line commencing at a concrete monument on Angeles Point in Clallam county near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" (latitude 48° 9' 3" north, longitude 123° 33' 01" west of Greenwich Meridian); thence running east on a line 81° 30' true across the flashlight and bell buoy off Partridge Point and thence continued to longitude 122° 40' west; thence north to the southerly shore of Sinclair Island; thence along the southerly shore of the island to the most easterly point of the island; thence 46° true to Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line of Lummi Island to where the shore line intersects line of longitude 122° 40' west; thence north to the mainland, including: The southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and their inlets, passages, waters, waterways, and tributaries.

(3) The commission may authorize commercial fishing for sockeye salmon within the waters described in subsection (2) of this section during the period June 10 to July 25 and for other salmon from the second Monday of September

through November 30, except during the hours between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.

(4) The commission may authorize commercial fishing for salmon with gill net gear prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

(5) Whenever the commission determines that a stock or run of salmon cannot be harvested in the usual manner, and that the stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the commission may authorize units of gill net and purse seine gear in any number or equivalents, by time and area, to fully utilize the harvestable portions of these salmon runs for the economic well being of the citizens of this state. Gill net and purse seine gear other than emergency and test gear authorized by the director shall not be used in Lake Washington.

(6) The commission may authorize commercial fishing for pink salmon in each odd-numbered year from August 1 through September 1 in the waters lying inside of a line commencing at the most easterly point of Dungeness Spit and thence projected to Point Partridge on Whidbey Island and a line commencing at Olele Point and thence projected easterly to Bush Point on Whidbey Island. [1995 1st sp.s. c 2 § 25 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 46; 1973 1st ex.s. c 220 § 2; 1971 ex.s. c 283 § 13; 1955 c 12 § 75.12.010. Prior: 1949 c 112 § 28; Rem. Supp. 1949 § 5780-301.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Legislative declaration: "The preservation of the fishing industry and food fish and shellfish resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent the depletion of these resources." [1973 1st ex.s. c 220 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.12.015 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca. Except as provided in this section, it is unlawful to fish commercially for chinook or coho salmon in the Pacific Ocean and the Straits of Juan de Fuca.

(1) The commission may authorize commercial fishing for coho salmon from June 16 through October 31.

(2) The commission may authorize commercial fishing for chinook salmon from March 15 through October 31. [1995 1st sp.s. c 2 § 26 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 48; 1955 c 12 § 75.18.020. Prior: 1953 c 147 § 3. Formerly RCW 75.18.020.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.12.020 Fishing near dams or obstructions. It is unlawful to fish for or take food fish at a rack, dam, or other obstruction or in the waters and on the beaches within one mile below a rack, dam, or other obstruction except as provided by rule of the department. [1996 c 267 § 19; 1983 1st ex.s. c 46 § 49; 1955 c 12 § 75.12.020. Prior: 1949 c 112 § 37; Rem. Supp. 1949 § 5780-311.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.12.031 Unlawful to fish in or interfere with fishways or protective devices. It is unlawful to fish for food fish in a fishway, fish guard, or other protective device, or to break open, damage, or interfere with the proper operation of a fishway, fish guard, other protective device or fish collection device. [1983 1st ex.s. c 46 § 51; 1955 c 12 § 75.20.070. Prior: 1949 c 112 § 39; Rem. Supp. 1949 § 5780-313. Formerly RCW 75.20.070.]

75.12.040 Unlawful salmon fishing gear. (1) It is unlawful to use, operate, or maintain a gill net which exceeds 250 fathoms in length or a drag seine in the waters of the Columbia river for catching salmon.

(2) It is unlawful to construct, install, use, operate, or maintain within state waters a pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or fixed appliance for catching salmon. The director may authorize the use of this gear for scientific investigations.

(3) The department, in coordination with the Oregon department of fish and wildlife, shall adopt rules to regulate the use of monofilament in gill net webbing on the Columbia river. [1993 sp.s. c 2 § 27; 1985 c 147 § 1; 1983 1st ex.s. c 46 § 52; 1955 c 12 § 75.12.040. Prior: 1949 c 112 § 29; Rem. Supp. 1949 § 5780-303.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.12.070 Molesting food fish or shellfish unlawful—Permit required for use of explosives. (1) Except as provided by rule of the department, it is unlawful to shoot, gaff, snag, snare, spear, stone, or otherwise molest food fish or shellfish in state waters.

(2) It is unlawful to use or discharge an explosive substance in state waters, except by permit of the director. [1996 c 267 § 20; 1983 1st ex.s. c 46 § 53; 1955 c 12 § 75.12.070. Prior: 1949 c 112 § 38; Rem. Supp. 1949 § 5780-312.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.12.090 Theft of food fish or shellfish—Molestation of fishing gear. (1) It is unlawful to take food fish or shellfish from a building, vehicle, vessel, container, or fishing gear thereby depriving the rightful owner of the food fish or shellfish.

(2) It is unlawful to molest gear used to take food fish or shellfish for either commercial purposes or personal use. [1990 c 144 § 8; 1983 1st ex.s. c 46 § 54; 1982 c 14 § 1;

1955 c 12 § 75.12.090. Prior: 1949 c 112 § 33; Rem. Supp. 1949 § 5780-307.]

75.12.100 Purchase or possession of food fish or shellfish taken unlawfully. It is unlawful to purchase, handle, deal in, sell, or possess food fish or shellfish contrary to this title or the rules of the department. [1996 c 267 § 21; 1983 1st ex.s. c 46 § 55; 1955 c 12 § 75.12.100. Prior: 1949 c 112 § 34; Rem. Supp. 1949 § 5780-308.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.12.115 Commercial fishing for crayfish unlawful—Exceptions. It is unlawful to fish commercially for crayfish in state waters except where crayfish have been commercially cultured or as permitted by rules of the department. [1996 c 267 § 22; 1983 1st ex.s. c 46 § 56; 1971 ex.s. c 106 § 1.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.12.120 Waste of food fish or shellfish unlawful—Exception—Timely processing required. It is unlawful to waste or destroy food fish or shellfish wantonly, except for disposals authorized by RCW 69.30.110.

A processor shall not purchase or engage a quantity of food fish or shellfish that cannot be processed within sixty hours after the food fish or shellfish are taken from the water, unless the food fish or shellfish are preserved in good marketable condition. [1985 c 51 § 7; 1983 1st ex.s. c 46 § 57; 1955 c 12 § 75.12.120. Prior: 1949 c 112 § 36; Rem. Supp. 1949 § 5780-310.]

75.12.125 Commingling of commercial and personal use food fish or shellfish unlawful. It is unlawful to commingle food fish or shellfish taken for personal use with food fish or shellfish taken for commercial purposes prior to or during canning or processing. The words "personal use only, not for sale" shall be embossed in a legible manner on the lid or cover of each container used in canning or preserving food fish or shellfish taken for personal use. [1983 1st ex.s. c 46 § 58.]

75.12.127 Vessels—Charter or recreational and commercial fishing on same day. It is unlawful to use a vessel in both charter or recreational fishing and commercial fishing on the same day. [1993 c 340 § 49.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.12.132 Commercial net fishing for salmon in tributaries of Columbia river. (1) It is unlawful to fish for or take salmon commercially with a net within the waters of the tributaries and sloughs described in subsection (2) of this section which flow into or are connected with the Columbia river.

(2) The director shall adopt rules defining geographical boundaries of the following Columbia river tributaries and sloughs:

- (a) Washougal river;
- (b) Camas slough;

- (c) Lewis river;
- (d) Kalama river;
- (e) Cowlitz river;
- (f) Elokomin river;
- (g) Elokomin sloughs;
- (h) Skamokawa sloughs;
- (i) Grays river;
- (j) Deep river;
- (k) Grays bay.

(3) The director may authorize commercial net fishing for salmon in the tributaries and sloughs from September 1 to November 30 if the time, areas and level of effort are regulated in order to maximize the recreational fishing opportunity while minimizing excess returns of fish to hatcheries. The director shall not authorize commercial net fishing if a significant catch of steelhead would occur. [1984 c 80 § 5; 1983 c 245 § 1.]

75.12.140 Reef net salmon fishing gear—Reef net areas specified. It is unlawful to fish for salmon with reef net fishing gear in state waters, except in the reef net areas described in this section.

(1) Point Roberts reef net fishing area includes those waters within 250 feet on each side of a line projected 129° true from a point at longitude 123° 01' 15" W. latitude 48° 58' 38" N. to a point one mile distant, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6300, published September, 1941, in Washington, D.C., eleventh edition.

(2) Cherry Point reef net fishing area includes those waters inland and inside the 10-fathom line between lines projected 205° true from points on the mainland at longitude 122° 44' 54" latitude 48° 51' 48" and longitude 122° 44' 18" latitude 48° 51' 33", a [as] such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(3) Lummi Island reef net fishing area includes those waters inland and inside a line projected from Village Point 208° true to a point 900 yards distant, thence 129° true to the point of intersection with a line projected 259° true from the shore of Lummi Island 122° 40' 42" latitude 48° 41' 32", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition, revised 11-25-57, save and except that there shall be excluded therefrom all waters lying inside of a line projected 259° true from a point at 122° 40' 42" latitude 48° 41' 32" to a point 300 yards distant from high tide, thence in a northerly direction to the United States Coast and Geodetic Survey reference mark number 2, 1941-1950, located on that point on Lummi Island known as Lovers Point, as such descriptions are shown upon the United States Coast and Geodetic Survey map number 6380 as aforesaid. The term "Village Point" as used herein shall be construed to mean a point of location on Village Point, Lummi Island, at the mean high tide line on a true bearing of 43° 53' a distance of 457 feet to the center of the chimney of a wood frame house on the east side of the county road. Said chimney and house being described as Village Point Chimney on page 612 of the

United States Coast and Geodetic Survey list of geographic positions No. G-5455, Rosario Strait.

(4) Sinclair Island reef net fishing area includes those waters inland and inside a line projected from the northern point of Sinclair Island to Boulder reef, thence 200° true to the northwesterly point of Sinclair Island, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(5) Flat Point reef net fishing area includes those waters within a radius of 175 feet of a point off Lopez Island located at longitude 122° 55' 24" latitude 48° 32' 33", as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(6) Lopez Island reef net fishing area includes those waters within 400 yards of shore between lines projected true west from points on the shore of Lopez Island at longitude 122° 55' 04" latitude 48° 31' 59" and longitude 122° 55' 54" latitude 48° 30' 55", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(7) Iceberg Point reef net fishing area includes those waters inland and inside a line projected from Davis Point on Lopez Island to the west point of Long Island, thence to the southern point of Hall Island, thence to the eastern point at the entrance to Jones Bay, and thence to the southern point at the entrance to Mackaye Harbor on Lopez Island; and those waters inland and inside a line projected 320° from Iceberg Point light on Lopez Island, a distance of 400 feet, thence easterly to the point on Lopez Island at longitude 122° 53' 00" latitude 48° 25' 39", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(8) Aleck Bay reef net fishing area includes those waters inland and inside a line projected from the southwestern point at the entrance to Aleck Bay on Lopez Island at longitude 122° 51' 11" latitude 48° 25' 14" southeasterly 800 yards to the submerged rock shown on U.S.G.S. map number 6380, thence northerly to the cove on Lopez Island at longitude 122° 50' 49" latitude 48° 25' 42", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(9) Shaw Island reef net fishing area number 1 includes those waters within 300 yards of shore between lines projected true south from points on Shaw Island at longitude 122° 56' 14" latitude 48° 33' 28" and longitude 122° 57' 29" latitude 48° 32' 58", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(10) Shaw Island reef net fishing area number 2 includes those waters inland and inside a line projected from Point George on Shaw Island to the westerly point of Neck Point on Shaw Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(11) Stuart Island reef net fishing area number 1 includes those waters within 600 feet of the shore of Stuart Island between lines projected true east from points at longitude 123° 10' 47" latitude 48° 39' 47" and longitude 123° 10' 47" latitude 48° 39' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(12) Stuart Island reef net fishing area number 2 includes those waters within 250 feet of Gossip Island, also known as Happy Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(13) Johns Island reef net fishing area includes those waters inland and inside a line projected from the eastern point of Johns Island to the northwestern point of Little Cactus Island, thence northwesterly to a point on Johns Island at longitude 123° 09' 24" latitude 48° 39' 59", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(14) Battleship Island reef net fishing area includes those waters lying within 350 feet of Battleship Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(15) Open Bay reef net fishing area includes those waters lying within 150 feet of shore between lines projected true east from a point on Henry Island at longitude 123° 11' 34 1/2" latitude 48° 35' 27 1/2" at a point 250 feet south, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(16) Mitchell Reef net fishing area includes those waters within a line beginning at the rock shown on U.S.G.S. map number 6380 at longitude 123° 10' 56" latitude 48° 34' 49 1/2", and projected 50 feet northwesterly, thence southwest-erly 250 feet, thence southeasterly 300 feet, thence northeast-erly 250 feet, thence to the point of beginning, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(17) Smugglers Cove reef fishing area includes those waters within 200 feet of shore between lines projected true west from points on the shore of San Juan Island at longitude 123° 10' 29" latitude 48° 33' 50" and longitude 123° 10' 31" latitude 48° 33' 45", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(18) Andrews Bay reef net fishing area includes those waters lying within 300 feet of the shore of San Juan Island between a line projected true south from a point at the northern entrance of Andrews Bay at longitude 123° 09' 53 1/2" latitude 48° 33' 00" and the cable crossing sign in Andrews Bay, at longitude 123° 09' 45" latitude 48° 33' 04", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(19) Orcas Island reef net fishing area includes those waters inland and inside a line projected true west a distance

of 1,000 yards from the shore of Orcas Island at longitude 122° 57' 40" latitude 48° 41' 06" thence northeasterly to a point 500 feet true west of Point Doughty, then true east to Point Doughty, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition. [1983 1st ex.s. c 46 § 59; 1965 c 64 § 1; 1961 c 236 § 1; 1959 c 309 § 1; 1955 c 276 § 2.]

75.12.155 Unauthorized fishing vessels entering state waters. In order to protect the welfare of the citizens of the state of Washington by protecting the natural resources of the state from illegal fishing in state waters, commercial fishing vessels which are not authorized by law to fish for salmon in Washington state waters cannot enter Washington state waters unless all salmon fishing gear is stowed below deck or placed in a position so that it is not readily available for fishing. [1987 c 262 § 1.]

75.12.210 Limitation on salmon fishing gear in Pacific Ocean. (1) Except as provided in subsection (2) of this section, it is unlawful to fish for or take salmon with gear other than troll gear or angling gear within the offshore waters or the waters of the Pacific Ocean over which the state has jurisdiction lying west of the following line: Commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between the lighthouse on Tatoosh Island in Clallam County and Bonilla Point on Vancouver Island; thence southerly to the lighthouse on Tatoosh Island; thence southerly to the most westerly point of Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean, crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbor; thence southerly to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to the Cape Shoalwater tower at the entrance to Willapa Bay; thence southerly to Leadbetter Point; thence southerly along the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly to the knuckle of the South jetty at the entrance to said river.

(2) The director may authorize the use of nets for taking salmon in the waters described in subsection (1) of this section for scientific investigations. [1993 c 20 § 2; 1983 1st ex.s. c 46 § 60; 1957 c 108 § 3.]

Purpose—1993 c 20: "The purpose of this act is to correct references to a geographical landmark on Cape Shoalwater that no longer exists. Cape Shoalwater Light has been removed and a new tower has been constructed four hundred yards to the west. It is not intended that this act make any substantive change in the boundaries of the areas described in RCW 75.12.210 and 75.28.012 beyond the minor adjustment necessitated by the replacement of the landmark." [1993 c 20 § 1.]

Preamble—1957 c 108: "The state has a vital interest in the salmon resources of the Pacific Ocean both within and beyond the territorial limits of the state, in that a large number of such salmon spawn in its fresh water streams, migrate to the waters of the Pacific Ocean and, in response to their anadromous cycle, return to the fresh water streams to spawn.

Expansion of fishing for salmon by the use of nets in waters of the eastern Pacific Ocean, which has occurred in the past year, will result in a substantial depletion of salmon originating within the state because the salmon runs are intercepted before they separate to move in toward the rivers of their origin. Oregon, California and Canada, through their respective fisheries agencies, have likewise expressed a deep concern over

this problem since portions of such salmon originate within their respective jurisdictions. Short of absolute prohibition, it appears to be presently impracticable to regulate salmon net fishing in such waters of the Pacific Ocean by any known scientific fisheries management techniques in order to insure adequate salmon escapement to the three Pacific Coast states and Canada, the reason being that salmon stocks and races are so commingled in such Pacific Ocean waters that they are indistinguishable as to origin until they enter the harbors, bays, straits and estuaries of the respective jurisdictions.

Canada, through its authorized officials, has proposed to prohibit its nationals from net fishing for salmon in Pacific Ocean waters provided the United States or the three Pacific Coast states apply such appropriate conservation measures to their respective citizens. Inasmuch as there is presently no congressional legislation prohibiting such fishing, and inasmuch as authorized officials of the state department of the United States have expressed a desire to have the states act in this area, the Pacific Marine Fisheries Commission has proposed and recommended appropriate legislation to the three Pacific Coast states to insure the survival of their valuable salmon resources." [1957 c 108 § 2. Formerly RCW 75.12.200.]

75.12.230 Possession or transportation in Pacific Ocean of salmon taken by other than troll lines or angling gear. Within the waters described in RCW 75.12.210, it is unlawful to transport or possess salmon on board a vessel carrying fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued by a state or country showing that the salmon have been lawfully taken within the territorial waters of the state or country. [1983 1st ex.s. c 46 § 61; 1963 c 234 § 2; 1957 c 108 § 5.]

Preamble—1957 c 108: See note following RCW 75.12.210.

75.12.320 Participation of non-Indians in Indian fishery forbidden—Exceptions, definitions, penalty. (1) Except as provided in subsection (2) of this section, it is unlawful for a person who is not a treaty Indian fisherman to participate in the taking of food fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery.

(2)(a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(b) Other treaty Indian fishermen with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishermen are members of the same tribe or another treaty tribe, may assist a treaty Indian fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

(3) For the purposes of this section:

(a) "Treaty Indian fisherman" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishermen by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, or to claim possession of a share of the catch.

(4) A violation of this section involving salmon constitutes illegal fishing and is subject to the sanctions provided under RCW 75.10.130. [1983 1st ex.s. c 46 § 63; 1982 c 197 § 1.]

75.12.390 Bottom trawling unlawful—Areas specified. Commercial bottom trawling for food fish and shellfish is unlawful in all areas of Hood Canal south of a line projected from Tala Point to Foulweather Bluff and in Puget Sound south of a line projected from Foulweather Bluff to Double Bluff and including all marine waters east of Whidbey Island and Camano Island. [1989 c 172 § 1.]

75.12.400 Unlawful to lift or set shellfish pots in Hood Canal at night. It is unlawful to lift or set shellfish pots from the waters of Hood Canal south of a line between the abutments of the Hood Canal bridge from one hour after sunset until one hour before sunrise. [1983 1st ex.s. c 46 § 64; 1982 c 14 § 2.]

75.12.410 Damaging department signs. It is unlawful to remove, possess, alter, or damage signs posted by authority of the director. [1983 1st ex.s. c 46 § 66; 1955 c 12 § 75.08.130. Prior: 1949 c 112 § 15; Rem. Supp. 1949 § 5780-214. Formerly RCW 75.08.130.]

75.12.420 Failure to make required reports and returns. It is unlawful for a fisher, dealer, or processor of food fish or shellfish to fail to make a report or return as required by this title or rule of the department. [1996 c 267 § 23; 1983 1st ex.s. c 46 § 67; 1955 c 12 § 75.08.210. Prior: 1949 c 112 § 18; Rem. Supp. 1949 § 5780-217. Formerly RCW 75.08.210.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.12.430 False or misleading information. It is unlawful to give intentionally false or misleading information to the department as to the time, area, or waters in which food fish or shellfish were taken. [1983 1st ex.s. c 46 § 68; 1955 c 12 § 75.08.220. Prior: 1949 c 112 § 14; Rem. Supp. 1949 § 5780-213. Formerly RCW 75.08.220.]

75.12.440 Hood Canal shrimp—Limitation on number of shrimp pots. It is unlawful to use more than fifty shrimp pots while commercially fishing for shrimp in that portion of Hood Canal lying south of the Hood Canal floating bridge. [1993 c 340 § 50; 1989 c 316 § 9; 1983 1st ex.s. c 31 § 2. Formerly RCW 75.28.134.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—1983 1st ex.s. c 31: "This act shall take effect January 1, 1984." [1983 1st ex.s. c 31 § 4.]

75.12.650 Commercial salmon fishing—Authorized gear. It is unlawful to fish commercially for salmon using fishing gear not authorized for commercial salmon fishing by rule of the department. The commission shall not authorize angling gear or other personal use gear for commercial

salmon fishing. [1996 c 267 § 24; 1983 1st ex.s. c 46 § 69; 1969 ex.s. c 23 § 1.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Effective date—1969 ex.s. c 23: "The provisions of this act shall become effective January 1, 1970." [1969 ex.s. c 23 § 2.]

Chapter 75.20

CONSTRUCTION PROJECTS IN STATE WATERS

Sections

- 75.20.005 Informational brochure.
- 75.20.025 Hazardous substance remedial actions—Procedural requirements not applicable.
- 75.20.040 Fish guards required on diversion devices—Penalties, remedies for failure.
- 75.20.050 Review of permit applications to divert or store water—Water flow policy.
- 75.20.060 Fishways required in dams, obstructions—Penalties, remedies for failure.
- 75.20.061 Director may modify inadequate fishways and fish guards.
- 75.20.090 If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.
- 75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Criminal penalty—Emergencies.
- 75.20.1001 Hydraulic projects to repair 1990 flood damage—Processing applications.
- 75.20.103 Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Criminal penalty—Emergencies.
- 75.20.104 Placement of woody debris as condition of permit.
- 75.20.1041 Dike vegetation management guidelines—Memorandum of agreement.
- 75.20.106 Hydraulic projects—Civil penalty.
- 75.20.108 Hydraulic projects for removal or control of spartina, purple loosestrife, and aquatic noxious weeds—Approval may not be required—Rules—Definitions.
- 75.20.110 Columbia river anadromous fish sanctuary—Restrictions.
- 75.20.130 Hydraulic appeals board—Members—Jurisdiction—Procedures.
- 75.20.140 Hydraulic appeals board—Procedures.
- 75.20.150 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited.
- 75.20.160 Marine beach front protective bulkheads or rockwalls.
- 75.20.170 Watershed restoration projects—Hydraulic project approval—Permit processing.
- 75.20.180 Marina construction, maintenance—Hydraulic project approval—Notice required.
- 75.20.190 Hydraulic projects—Off-site mitigation.
- 75.20.310 Operation and maintenance of fish collection facility on Toutle river.
- 75.20.320 Wetlands filled under RCW 75.20.300—Mitigation not required.

75.20.005 Informational brochure. The department of fish and wildlife, the department of ecology, and the department of natural resources shall jointly develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommends ways to best proceed through the various regulatory permitting processes. [1993 sp.s. c 2 § 28; 1991 c 322 § 21.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.025 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 18.]

Severability—1994 c 257: See note following RCW 36.70A.270.

75.20.040 Fish guards required on diversion devices—Penalties, remedies for failure. A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device. It is unlawful for the owner of a diversion device to fail to comply with this section.

Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken. [1983 1st ex.s. c 46 § 70; 1955 c 12 § 75.20.040. Prior: 1949 c 112 § 45; Rem. Supp. 1949 § 5780-319.]

75.20.050 Review of permit applications to divert or store water—Water flow policy. It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The director of ecology shall give the director notice of each application for a permit to divert or store water. The director has thirty days after receiving the notice to state his or her objections to the application. The permit shall not be issued until the thirty-day period has elapsed.

The director of ecology may refuse to issue a permit if, in the opinion of the director, issuing the permit might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights. [1993 sp.s. c 2 § 29; 1988 c 36 § 32; 1986 c 173 § 7; 1983 1st ex.s. c 46 § 71; 1955 c 12 § 75.20.050. Prior: 1949 c 112 § 46; Rem. Supp. 1949 § 5780-320.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.20.060 Fishways required in dams, obstructions—Penalties, remedies for failure. A dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish. It is unlawful for the owner, manager, agent, or person in charge of the dam or obstruction to fail to comply with this section.

If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction. [1983 1st ex.s. c 46 § 72; 1955 c 12 § 75.20.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780-321.]

75.20.061 Director may modify inadequate fishways and fish guards. If the director determines that a fishway or fish guard described in RCW 75.20.040 and 75.20.060 and in existence on September 1, 1963, is inadequate, in addition to other authority granted in this chapter, the director may remove, relocate, reconstruct, or modify the device, without cost to the owner. The director shall not materially modify the amount of flow of water through the device. After the department has completed the improvements, the fishways and fish guards shall be operated and maintained at the expense of the owner in accordance with RCW 75.20.040 and 75.20.060. [1983 1st ex.s. c 46 § 73; 1963 c 153 § 1.]

Director of fish and wildlife may modify, etc., inadequate fishways and protective devices: RCW 77.12.425.

75.20.090 If fishway is impractical, fish hatchery or cultural facility may be provided in lieu. Before a person commences construction on a dam or other hydraulic project for which the director determines that a fishway is impractical, the person shall at the option of the director:

(1) Convey to the state a fish cultural facility on a site satisfactory to the director and constructed according to plans and specifications approved by the director, and enter into an agreement with the director secured by sufficient bond, to

furnish water and electricity, without expense, and funds necessary to operate and maintain the facilities; or

(2) Enter into an agreement with the director secured by sufficient bond to make payments to the state as the director determines are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of the dam or other hydraulic work to compensate for the damages caused by the dam or other hydraulic work.

(3) A decision of the director under this section is subject to review in the superior court of the state for Thurston county. Each day that a person carries on construction work or operates a dam or hydraulic project without complying with this section is a separate offense. [1983 1st ex.s. c 46 § 74; 1955 c 12 § 75.20.090. Prior: 1949 c 112 § 48; Rem. Supp. 1949 § 5780-322.]

75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Criminal penalty—Emergencies.

In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the written approval of the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 and *75.20.1002, the department shall grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay. Approval is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent. If any person or government agency commences

construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

For the purposes of this section and RCW 75.20.103, "bed" shall mean the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

The phrase "to construct any form of hydraulic project or perform other work" shall not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately upon request, for a stream crossing during an emergency situation.

This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 75.20.103. [1993 sp.s. c 2 § 30; 1991 c 322 § 30; 1988 c 272 § 1; 1988 c 36 § 33; 1986 c 173 § 1; 1983 1st ex.s. c 46 § 75; 1975 1st ex.s. c 29 § 1; 1967 c 48 § 1; 1955 c 12 § 75.20.100. Prior: 1949 c 112 § 49; Rem. Supp. 1949 § 5780-323.]

*Reviser's note: RCW 75.20.1002 expired June 30, 1993.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1988 c 279: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 272 § 6.]

75.20.1001 Hydraulic projects to repair 1990 flood damage—Processing applications. The department shall process hydraulic project applications submitted under RCW 75.20.100 or 75.20.103 within thirty days of receipt of the application. This requirement is only applicable for the repair and reconstruction of legally constructed dikes, seawalls, and other flood control structures damaged as a result of flooding or windstorms that occurred in November and December 1990. [1993 sp.s. c 2 § 31; 1991 c 322 § 12.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

75.20.103 Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Criminal penalty—Emergencies. In the event that any person or government agency desires to construct any form of hydraulic project or other work that diverts water for agricultural irrigation or stock watering purposes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, and when such diversion or streambank stabilization will use, divert, obstruct, or change the natural flow or bed of any river or stream or will utilize any waters of the state or materials from the stream beds, the person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure a written approval from the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 and *75.20.1002, the department shall grant or deny the approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for an approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within ordinary high water line, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay.

Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

An approval shall remain in effect without need for periodic renewal for projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. Approval for streambank stabilization projects shall remain in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropri-

ate agency before commencing the construction or other work within the area covered by the approval.

The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Issuance, denial, conditioning, or modification shall be appealable to the hydraulic appeals board established in RCW 43.21B.005 within thirty days of the notice of decision. The burden shall be upon the department to show that the denial or conditioning of an approval is solely aimed at the protection of fish life.

The department may, after consultation with the permittee, modify an approval due to changed conditions. The modifications shall become effective unless appealed to the hydraulic appeals board within thirty days from the notice of the proposed modification. The burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

A permittee may request modification of an approval due to changed conditions. The request shall be processed within forty-five calendar days of receipt of the written request. A decision by the department may be appealed to the hydraulic appeals board within thirty days of the notice of the decision. The burden is on the permittee to show that changed conditions warrant the requested modification and that such modification will not impair fish life.

If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section.

For purposes of this chapter, "streambank stabilization" shall include but not be limited to log and debris removal, bank protection (including riprap, jetties, and groins), gravel removal and erosion control. [1993 sp.s. c 2 § 32; 1991 c 322 § 31; 1988 c 272 § 2; 1988 c 36 § 34; 1986 c 173 § 2.]

*Reviser's note: RCW 75.20.1002 expired June 30, 1993.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1988 c 272: See note following RCW 75.20.100.

75.20.104 Placement of woody debris as condition of permit. Whenever the placement of woody debris is required as a condition of a hydraulic permit approval issued pursuant to RCW 75.20.100 or 75.20.103, the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant. [1993 sp.s. c 2 § 33; 1991 c 322 § 18.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.1041 Dike vegetation management guidelines—Memorandum of agreement. The department and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to RCW 75.20.100 and 75.20.103 are met. [1993 sp.s. c 2 § 34; 1991 c 322 § 19.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.106 Hydraulic projects—Civil penalty. The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 75.20.100 or 75.20.103. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation. Any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the director. Appeals shall be filed within thirty days of receipt of notice imposing any penalty. The penalty imposed shall become due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter 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 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. All penalties recovered under this section shall be paid into the state's general fund. [1993 sp.s. c 2 § 35; 1988 c 36 § 35; 1986 c 173 § 6.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.20.108 Hydraulic projects for removal or control of spartina, purple loosestrife, and aquatic noxious weeds—Approval may not be required—Rules—Definitions. (1) An activity conducted solely for the removal or control of spartina shall not require hydraulic project approval.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with hand-held tools, hand-held equipment, or equipment carried by a person when used shall not require hydraulic project approval.

(3) By June 30, 1997, the department of fish and wildlife shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or projects for controlling purple loosestrife not covered by subsection (2) of this section, which projects will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the hydraulic project approval for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet; no further hydraulic project approval is required for such a project.

From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by subsection (1) or (2) of this section and shall produce and distribute one or more pamphlets describing these methods of removal or control. Such a pamphlet serves as the hydraulic project approval for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet; no further hydraulic project approval is required for such a project.

(4) As used in this section, "spartina," "purple loosestrife," and "aquatic noxious weeds" have the meanings prescribed by RCW 17.26.020.

(5) Nothing in this section shall prohibit the department of fish and wildlife from requiring a hydraulic project approval for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds. [1995 c 255 § 4.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

75.20.110 Columbia river anadromous fish sanctuary—Restrictions. (1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) It is unlawful to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as determined by the commission.

(b) Except by order of the commission, it is unlawful to divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The commission may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers. [1995 1st sp.s. c 2 § 27 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 36; 1988 c 36 § 36; 1985 c 307 § 5; 1983 1st ex.s. c 46 § 76; 1961 c 4 § 1; Initiative Measure No. 25, approved November 8, 1960.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1961 c 4: "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3 (Initiative Measure No. 25, approved November 8, 1960).]

75.20.130 Hydraulic appeals board—Members—Jurisdiction—Procedures. (1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it, and that finding and decision shall be effective upon being signed by two or more board members and upon being filed at the hydraulic appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by the department: (a) Under the authority granted in RCW 75.20.103 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW

84.34.020; or (b) under the authority granted in RCW 75.20.190 for off-site mitigation proposals.

(6)(a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 75.20.103 may seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [1996 c 276 § 2; 1993 sp.s. c 2 § 37; 1989 c 175 § 160; 1988 c 272 § 3; 1988 c 36 § 37; 1986 c 173 § 4.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1988 c 272: See note following RCW 75.20.100.

75.20.140 Hydraulic appeals board—Procedures.

(1) In all appeals, the hydraulic appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(2) In all appeals, the hydraulic appeals 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 34.05 RCW relating to adjudicative proceedings.

(3) All proceedings before the hydraulic appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(4) Judicial review of a decision of the hydraulic appeals board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1995 c 382 § 7; 1989 c 175 § 161; 1986 c 173 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

75.20.150 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 in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 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. [1989 c 171 § 8; 1987 c 343 § 6.]

Severability—1989 c 171: See note following RCW 43.83B.400.

Severability—1987 c 343: See note following RCW 43.83B.300.

75.20.160 Marine beach front protective bulkheads or rockwalls. (1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of hydraulic permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a hydraulic permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a

marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing; however, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations;

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic permit approval under this section may formally appeal the decision to the hydraulic appeals board pursuant to this chapter. [1991 c 279 § 1.]

75.20.170 Watershed restoration projects—Hydraulic project approval—Permit processing. A hydraulic project approval required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. [1995 c 378 § 14.]

75.20.180 Marina construction, maintenance—Hydraulic project approval—Notice required. (1) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(2) For a marina in existence on June 6, 1996, or a marina that has received a hydraulic project approval for its initial construction, a renewable, five-year hydraulic project approval shall be issued, upon request, for regular maintenance activities of the marina.

(3) Upon construction of a new marina that has received hydraulic project approval, a renewable, five-year hydraulic project approval shall be issued, upon request, for regular maintenance activities of the marina.

(4) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina to the conditions approved in the initial hydraulic project approval. These activities may include, but are not

limited to, dredging, piling replacement, and float replacement.

(5) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin. [1996 c 192 § 2.]

Finding—Intent—1996 c 192: "The legislature finds that initial construction of a marina and some maintenance activities change the natural flow or bed of the salt or fresh water body in which the marina is constructed. Because of this disturbance, it is appropriate that plans for initial marina construction as well as some maintenance activities undergo the hydraulic project review and approval process established in chapter 75.20 RCW.

It is the intent of the legislature that after a marina has received a hydraulic project approval and been constructed, a renewable, five-year hydraulic project approval be issued, upon request, for regular maintenance activities within the marina." [1996 c 192 § 1.]

75.20.190 Hydraulic projects—Off-site mitigation.

The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by hydraulic project applicants.

If a hydraulic project permit applicant proposes off-site mitigation and the department does not approve the hydraulic permit or conditions the permit approval in such a manner as to render off-site mitigation unpracticable, the hydraulic project proponent must be given the opportunity to submit the hydraulic project application to the hydraulic appeals board for approval. [1996 c 276 § 1.]

75.20.310 Operation and maintenance of fish collection facility on Toutle river. The legislature recognizes the need to mitigate the effects of sedimentary build-up and resultant damage to fish population in the Toutle river resulting from the Mt. St. Helens eruption. The state has entered into a contractual agreement with the United States army corps of engineers designed to minimize fish habitat disruption created by the sediment retention structure on the Toutle river, under which the corps has agreed to construct a fish collection facility at the sediment retention structure site conditional upon the state assuming the maintenance and operation costs of the facility. The department shall operate and maintain a fish collection facility on the Toutle river. [1993 sp.s. c 2 § 39; 1988 c 36 § 39; 1987 c 506 § 101.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

75.20.320 Wetlands filled under RCW 75.20.300—Mitigation not required. The department may not require mitigation for adverse impacts on fish life or habitat that occurred at the time a wetland was filled, if the wetland was filled under the provisions of RCW 75.20.300. [1995 c 328 § 1.]

Chapter 75.24
SHELLFISH

Sections

- 75.24.010 State oyster reserves established.
- 75.24.030 Sale or lease of state oyster reserves.
- 75.24.050 Taking shellfish from state oyster reserves or state tidelands.
- 75.24.060 State oyster reserves management policy—Personal use harvesting—Inventory—Management categories—Cultch permits.
- 75.24.065 Olympia oysters—Cultivation on reserves in Puget Sound.
- 75.24.070 Sale of shellfish from state oyster reserves.
- 75.24.080 Restricted shellfish areas—Infestations—Permit.
- 75.24.090 Culled shellfish must be returned to beds.
- 75.24.100 Geoduck clams, commercial harvesting—Unlawful acts—Gear requirements.
- 75.24.110 Imported oyster seed—Permit and inspection required.
- 75.24.120 Imported oyster seed—Inspection—Costs.
- 75.24.130 Establishment of reserves on state shellfish lands.

Sanitary control of shellfish: Chapter 69.30 RCW.

75.24.010 State oyster reserves established. The following areas are the state oyster reserves and are more completely described in maps and plats on file in the office of the commissioner of public lands and in the office of the auditor of the county in which the reserve is located:

1. PUGET SOUND OYSTER RESERVES:

- (a) Totten Inlet reserves (sometimes known as Oyster Bay reserves), located in Totten Inlet, Thurston county;
- (b) Eld Inlet reserves (sometimes known as Mud Bay reserves), located in Mud Bay, Thurston county;
- (c) Oakland Bay reserves, located in Oakland Bay, Mason county;
- (d) North Bay reserves (sometimes known as Case Inlet reserves), located in Case Inlet, Mason county.

2. WILLAPA HARBOR OYSTER RESERVES:

- (a) Nemah reserve, south and west sides of reserve located along Nemah River channel, Pacific county;
- (b) Long Island reserve, located at south end and along west side of Long Island, Willapa Harbor, Pacific county;
- (c) Long Island Slough reserve, located at south end and along east side of Long Island, Willapa Harbor, Pacific county;
- (d) Bay Center reserve, located in the Palix River channel, extending from Palix River bridge to beyond Bay Center to north of Goose Point, Willapa Harbor, Pacific county;
- (e) Willapa River reserve, located in the Willapa River channel extending west and up-river from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel, Willapa Harbor, Pacific county. [1983 1st ex.s. c 46 § 78; 1955 c 12 § 75.24.010. Prior: 1949 c 112 § 54; Rem. Supp. 1949 § 5780-01.]

75.24.030 Sale or lease of state oyster reserves. Only upon recommendation of the commission may the state oyster reserves be sold, leased, or otherwise disposed of by the department of natural resources. [1995 1st sp.s. c 2 § 28 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 79; 1955 c 12 § 75.24.030. Prior: 1949 c 112 § 55; Rem. Supp. 1949 § 5780-402.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.24.050 Taking shellfish from state oyster reserves or state tidelands. It is unlawful to take shellfish from state oyster reserves or tidelands under the jurisdiction of the state contrary to this title or rules of the department. [1996 c 267 § 25; 1983 1st ex.s. c 46 § 80; 1955 c 12 § 75.24.050. Prior: 1949 c 112 § 62; Rem. Supp. 1949 § 5780-409.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.24.060 State oyster reserves management policy—Personal use harvesting—Inventory—Management categories—Cultch permits. It is the policy of the state to improve state oyster reserves so that they are productive and yield a revenue sufficient for their maintenance. In fixing the price of oysters and other shellfish sold from the reserves, the director shall take into consideration this policy. It is also the policy of the state to maintain the oyster reserves to furnish shellfish to growers and processors and to stock public beaches.

Shellfish may be harvested from state oyster reserves for personal use as prescribed by rule of the director.

The department shall periodically inventory the state oyster reserves and assign the reserve lands into management categories:

- (1) Native Olympia oyster broodstock reserves;
- (2) Commercial shellfish harvesting zones;
- (3) Commercial shellfish propagation zones designated for long-term leasing to private aquaculturists;
- (4) Public recreational shellfish harvesting zones;
- (5) Unproductive land.

The department shall manage each category of oyster reserve land to maximize the sustained yield production of shellfish consistent with the purpose for establishment of each management category.

The department shall develop an oyster reserve management plan, to include recommendations for leasing reserve lands, in coordination with the shellfish industry, by January 1, 1986. The report shall be presented to the house and senate committees on natural resources.

The director shall protect, reseed, improve the habitat of, and replant state oyster reserves and issue cultch permits. [1985 c 256 § 1; 1983 1st ex.s. c 46 § 81; 1969 ex.s. c 91 § 1; 1955 c 12 § 75.24.060. Prior: 1949 c 112 § 56; Rem. Supp. 1949 § 5780-403.]

75.24.065 Olympia oysters—Cultivation on reserves in Puget Sound. The legislature finds that current environmental and economic conditions warrant a renewal of the state's historical practice of actively cultivating and managing its oyster reserves in Puget Sound to produce the state's native oyster, the Olympia oyster. The department shall reestablish dike cultivated production of Olympia oysters on such reserves on a trial basis as a tool for planning more comprehensive cultivation by the state. [1993 sp.s. c 2 § 40; 1985 c 256 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.24.070 Sale of shellfish from state oyster reserves. The director shall determine the time, place, and method of sale of oysters and other shellfish from state oyster reserves.

To maintain local communities and industries and to restrain the formation of monopolies in the industry, the director shall determine the number of bushels which shall be sold to a person. When the shellfish are sold at public auction, the director may reject any and all bids. [1983 1st ex.s. c 46 § 82; 1955 c 12 § 75.24.070. Prior: 1949 c 112 § 57; Rem. Supp. 1949 § 5780-404.]

Oyster reserve fishery license: RCW 75.28.290.

75.24.080 Restricted shellfish areas—Infestations—Permit. The director may designate as "restricted shellfish areas" those areas in which infection or infestation of shellfish is present. Except by permit of the director, it is unlawful to transplant or transport into or out of a restricted area shellfish or equipment used in culturing, taking, handling, or processing shellfish. [1983 1st ex.s. c 46 § 83; 1955 c 12 § 75.24.080. Prior: 1949 c 112 § 59; Rem. Supp. 1949 § 5780-406.]

75.24.090 Culled shellfish must be returned to beds.

It is unlawful to destroy oysters or clams by culling them on land or shore and leaving the culled oysters or clams there to die. The culled oysters or clams must be returned to the harvest area, except as provided by rule of the department. [1996 c 267 § 26; 1983 1st ex.s. c 46 § 84; 1955 c 212 § 7; 1955 c 12 § 75.24.090. Prior: 1949 c 112 § 61; Rem. Supp. 1949 § 5780-408.]

Intent—**Effective date**—1996 c 267: See notes following RCW 75.08.011.

75.24.100 Geoduck clams, commercial harvesting—Unlawful acts—Gear requirements. (1) It is unlawful to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. It is unlawful to commercially harvest geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0 ft.), or that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the commission shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The commission may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations. [1995 1st sp.s. c 2 § 29 (Referendum Bill No. 45, approved

November 7, 1995); 1993 c 340 § 51; 1984 c 80 § 2. Prior: 1983 1st ex.s. c 46 § 85; 1983 c 3 § 193; 1979 ex.s. c 141 § 1; 1969 ex.s. c 253 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Liberal construction—1969 ex.s. c 253: "The provisions of this act shall be liberally construed." [1969 ex.s. c 253 § 5.]

Severability—1969 ex.s. c 253: "If any provisions of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 253 § 6.]

Designation of aquatic lands for geoduck harvesting: RCW 79.96.085.

Diver license for harvesting geoducks: RCW 75.28.750.

75.24.110 Imported oyster seed—Permit and inspection required. It is unlawful for a person to import oysters or oyster seed into this state for the purpose of planting them in state waters without a permit from the director. The director shall issue a permit only after an adequate inspection has been made and the oysters or oyster seed are found to be free of disease, pests, and other substances which might endanger oysters in state waters. [1983 1st ex.s. c 46 § 87; 1955 c 12 § 75.08.054. Prior: 1951 c 271 § 42. Formerly RCW 75.08.054.]

75.24.120 Imported oyster seed—Inspection—Costs.

The director may require imported oyster seed to be inspected for diseases and pests. The director may specify the place of inspection. Persons importing oyster seed shall pay for the inspection costs excluding the inspector's salary. The cost shall be determined by the director and prorated among the importers according to the number of cases of oyster seeds each imports. The director shall specify the time and manner of payment. [1983 1st ex.s. c 46 § 88; 1967 ex.s. c 38 § 1; 1955 c 12 § 75.08.056. Prior: 1951 c 271 § 43. Formerly RCW 75.08.056.]

75.24.130 Establishment of reserves on state shellfish lands. The commission may examine the clam, mussel, and oyster beds located on aquatic lands belonging to the state and request the commissioner of public lands to withdraw these lands from sale and lease for the purpose of establishing reserves or public beaches. The commission shall conserve, protect, and develop these reserves and the oyster, shrimp, clam, and mussel beds on state lands. [1995 1st sp.s. c 2 § 30 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 89; 1955 c 12 § 75.08.060. Prior: 1949 c 112 § 7(5); Rem. Supp. 1949 § 5780-206(5). Formerly RCW 75.08.060.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Chapter 75.25
RECREATIONAL LICENSES

Sections

- 75.25.005 Recreational licenses issued by department.
- 75.25.080 Physical disability permit—Shellfish or food fish.
- 75.25.090 Personal use fishing licenses—Fees.
- 75.25.091 Personal use food fish license—Fees—Maximum catch.
- 75.25.092 Personal use shellfish and seaweed license—Fees.
- 75.25.095 Family fishing days.
- 75.25.110 Free recreational fishing licenses, criteria—Motor vehicle special parking permit may be used.
- 75.25.120 Personal use food fish licenses—Reciprocity with Oregon in concurrent waters of Columbia river and coastal waters.
- 75.25.130 Recreational licenses—Issuance—Dealer's fee—Rules.
- 75.25.140 Recreational licenses—Nontransferable—Enforcement provisions.
- 75.25.150 Unlawful possession of shellfish, food fish, or seaweed.
- 75.25.160 Recreational licenses—Penalties.
- 75.25.170 Recreational licenses—Use of fees.
- 75.25.180 Recreational licenses—Terms.
- 75.25.190 Catch record cards.
- 75.25.200 Group permits—Exemption from individual license and fee requirement—Conditions.
- 75.25.210 Duplicate licenses, permits, tags, stamps, and catch record cards—Fees.
- 75.25.901 Effective date—1987 c 87.
- 75.25.902 Effective date—1989 c 305.

Validity of licenses issued by department of fisheries: RCW 77.32.094.

75.25.005 Recreational licenses issued by department. The following recreational fishing licenses are administered and issued by the department under authority of the director:

- (1) Personal use food fish license; and
- (2) Personal use shellfish and seaweed license. [1993 sp.s. c 17 § 4; 1993 sp.s. c 2 § 41; 1989 c 305 § 1.]

Reviser's note: This section was amended by 1993 sp.s. c 2 § 41 and by 1993 sp.s. c 17 § 4, 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).

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.25.080 Physical disability permit—Shellfish or food fish. (1) It is lawful to fish for, take, or possess the personal-use daily bag limit of shellfish or food fish for a disabled person if the harvester is licensed and if the disabled person is licensed and present on site and in possession of a physical disability permit issued by the director.

(2) An application for a physical disability permit must be submitted on a department official form and must be accompanied by a licensed medical doctor's certification of disability.

(3) A person with a physical disability permit is not required to be present at the location where another person is digging razor clams for the disabled person. The physical disability permittee is required to be in the direct line of sight of the person digging razor clams for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the physical disability permittee is

required to be within one-quarter mile of the person who is digging razor clams for him or her. [1993 sp.s. c 17 § 5; 1993 sp.s. c 2 § 42; 1993 c 201 § 1; 1989 c 305 § 4; 1983 1st ex.s. c 46 § 92; 1980 c 81 § 2.]

Reviser's note: This section was amended by 1993 c 201 § 1, 1993 sp.s. c 2 § 42, and by 1993 sp.s. c 17 § 5, 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).

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—1980 c 81: "This act shall take effect on July 1, 1980." [1980 c 81 § 3.]

75.25.090 Personal use fishing licenses—Fees.

Reviser's note: RCW 75.25.090 was amended by 1993 c 215 § 1 without reference to its repeal by 1993 sp.s. c 17 § 31, effective January 1, 1994. It has been decodified for publication purposes pursuant to RCW 1.12.025.

75.25.091 Personal use food fish license—Fees—Maximum catch. (1) A personal use food fish license is required for all persons other than residents under fifteen years of age to fish for, take, or possess food fish for personal use from state waters or offshore waters. A personal use food fish license is not required under this section to fish for, take, or possess carp, smelt, or albacore.

(2) The fees for annual personal use food fish licenses include the one dollar regional fisheries enhancement surcharge imposed in RCW 75.50.100 and are as follows:

(a) For a resident fifteen years of age or older and under seventy years of age, eight dollars;

(b) For a resident seventy years of age or older, three dollars; and

(c) For a nonresident, twenty dollars.

(3) The fee for a three-consecutive-day personal use food fish license is five dollars, and includes the one-dollar regional fishery enhancement group surcharge imposed in RCW 75.50.100.

(4) An annual personal use food fish license is valid for a maximum catch of fifteen salmon, after which another annual personal use food fish license may be purchased.

(5) An annual personal use food fish license is valid for an annual maximum catch of fifteen sturgeon. No person may take more than fifteen sturgeon in any calendar year. [1994 c 255 § 3; 1993 sp.s. c 17 § 2.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Finding—1993 sp.s. c 17: "The legislature finds that additional cost savings can be realized by simplifying the department of fisheries recreational licensing system. The legislature finds that significant benefits will accrue to recreational fishers from streamlining the department of fisheries recreational licensing system. The legislature finds recreational license fees and commercial landing taxes have not been increased in recent years. The legislature finds that reduction in important department of fisheries programs can be avoided by increasing license fees and commercial landing taxes. The legislature finds that it is in the best interest of the state to avoid significant reductions in current department of fisheries activities." [1993 sp.s. c 17 § 1.]

Contingent effective date—1993 sp.s. c 17: "This act shall take effect January 1, 1994, except that sections 13 through 30 of this act shall take effect only if Senate Bill No. 5124 does not become law by August 1,

1993." [1993 sp.s. c 17 § 32.] Senate Bill No. 5124 [1993 c 340] did become law; sections 13 through 30 of 1993 sp.s. c 17 did not become law.

Severability—1993 sp.s. c 17: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 sp.s. c 17 § 53.]

75.25.092 Personal use shellfish and seaweed license—Fees. (1) A personal use shellfish and seaweed license is required for all persons other than residents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish except crawfish (*Pacifastacus* sp.) for personal use from state waters or offshore waters including national park beaches.

(2) The fees for annual personal use shellfish and seaweed licenses are:

(a) For a resident fifteen years of age or older and under seventy years of age, five dollars;

(b) For a resident seventy years of age or older, three dollars; and

(c) For a nonresident, twenty dollars.

(3) The fee for a three-consecutive-day personal use shellfish and seaweed license is five dollars. [1994 c 255 § 4; 1993 sp.s. c 17 § 3.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.25.095 Family fishing days. The commission may adopt rules designating times and places for the purposes of family fishing days when a recreational fishing license is not required to fish for food fish or shellfish. Family fishing days for food fish need not coincide with family fishing days for shellfish. All other applicable laws and rules shall remain in effect, except that a catch record card is not required on family fishing days for food fish. [1996 c 20 § 1; 1995 1st sp.s. c 2 § 31 (Referendum Bill No. 45, approved November 7, 1995); 1990 c 34 § 2.]

Effective date—1996 c 20: "This act shall take effect July 1, 1996." [1996 c 20 § 3.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Legislative finding—1990 c 34: "The legislature finds that conservation and wise use of the state's food fish and shellfish resources are of paramount importance. The legislature finds that public awareness and enjoyment is critical to conserving the state's food fish and shellfish resources. The legislature finds that public awareness can be increased if the departments of wildlife and fisheries jointly participate in a national fishing week program by scheduling free family fishing days on the same days." [1990 c 34 § 1.]

75.25.110 Free recreational fishing licenses, criteria—Motor vehicle special parking permit may be used.

(1) Any of the recreational fishing licenses required by this chapter shall, upon written application, be issued without charge to the following individuals:

(a) Residents who are honorably discharged veterans of the United States armed forces and who are sixty-five years of age or older with a service-connected disability;

(b) Residents who are honorably discharged veterans of the United States armed forces with a thirty percent or more service-connected disability;

(c) A person who is blind;

(d) A person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability from the department of social and health services; and

(e) A person who is physically handicapped and confined to a wheelchair.

(2) A person who is blind or a physically handicapped person confined to a wheelchair who has been issued a card for a permanent disability under RCW 46.16.381 may use that card in place of a fishing license.

(3) Licenses issued at no charge under this section shall be issued from Olympia as provided by rule of the director. [1994 c 255 § 5; 1993 sp.s. c 17 § 6; 1989 c 305 § 8; 1987 c 87 § 3; 1983 1st ex.s. c 46 § 95; 1977 ex.s. c 327 § 13. Formerly RCW 75.28.630.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

75.25.120 Personal use food fish licenses—Reciprocity with Oregon in concurrent waters of Columbia river and coastal waters. In concurrent waters of the Columbia river and in Washington coastal territorial waters from the Oregon-Washington boundary to a point five nautical miles north, an Oregon angling license comparable to the Washington personal use food fish license or three-consecutive-day personal use food fish license is valid if Oregon recognizes as valid the Washington personal use food fish license or three-consecutive-day personal use food fish license in comparable Oregon waters.

If Oregon recognizes as valid the Washington personal use food fish license or three-consecutive-day personal use food fish license southward to Cape Falcon in the coastal territorial waters from the Washington-Oregon boundary and in concurrent waters of the Columbia river then Washington shall recognize a valid Oregon license comparable to the Washington personal use food fish license or three-consecutive-day personal use food fish license northward to Leadbetter Point.

Oregon licenses are not valid for the taking of food fish when angling in concurrent waters of the Columbia river from the Washington shore. [1994 c 255 § 6; 1993 sp.s. c 17 § 7; 1989 c 305 § 9; 1987 c 87 § 4; 1985 c 174 § 1; 1983 1st ex.s. c 46 § 96; 1977 ex.s. c 327 § 17. Formerly RCW 75.28.670.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

75.25.130 Recreational licenses—Issuance—Dealer's fee—Rules. All recreational licenses required by this chapter shall be issued only under authority of the director.

The director may authorize license dealers to issue the recreational licenses and collect the recreational license fees. In addition to the recreational license fees, dealers may charge a dealer's fee for each recreational license. The director shall establish the amount to be retained by dealers, which shall be at least fifty cents for each license issued. Fees retained by dealers shall be uniform throughout the state. The dealer's fee may be retained by the license dealer.

The director shall adopt rules for the issuance of recreational licenses and for the collection, payment, and handling of license fees and dealers' fees. [1989 c 305 § 11; 1987 c 87 § 6; 1984 c 80 § 7; 1983 1st ex.s. c 46 § 97; 1977 ex.s. c 327 § 12. Formerly RCW 75.28.620.]

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

75.25.140 Recreational licenses—Nontransferable—Enforcement provisions. (1) Recreational licenses are not transferable. Upon request of a fisheries patrol officer, ex officio fisheries patrol officer, or authorized fisheries employee, a person digging for, fishing for, or possessing shellfish, [or] seaweed or fishing for or possessing food fish for personal use shall exhibit the required recreational license and write his or her signature for comparison with the signature on the license. Failure to comply with the request is prima facie evidence that the person does not have a license or is not the person named on the license.

(2) The personal use shellfish and seaweed license shall be visible on the licensee while harvesting shellfish or seaweed. [1993 sp.s. c 17 § 8; 1989 c 305 § 12; 1987 c 87 § 7; 1984 c 80 § 8; 1983 1st ex.s. c 46 § 98; 1980 c 78 § 135; 1977 ex.s. c 327 § 15. Formerly RCW 75.28.650.]

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

75.25.150 Unlawful possession of shellfish, food fish, or seaweed. It is unlawful to dig for, fish for, harvest, or possess shellfish, food fish, or seaweed without the licenses required by this chapter. [1994 c 255 § 7; 1993 sp.s. c 17 § 9; 1989 c 305 § 13; 1984 c 80 § 9; 1983 1st ex.s. c 46 § 99.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.25.160 Recreational licenses—Penalties. A person who violates a provision of this chapter or who knowingly falsifies information required for the issuance of a recreational license is guilty of a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. [1989 c 305 § 15; 1987 c 87 § 8; 1984 c 80 § 10; 1983 1st ex.s. c 46 § 100; 1977 ex.s. c 327 § 16. Formerly RCW 75.28.660.]

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

75.25.170 Recreational licenses—Use of fees. Fees received for recreational licenses required under this chapter shall be deposited in the general fund and shall be appropriated for management, enhancement, research, and enforcement purposes of the shellfish, salmon, and marine fish programs of the department. [1993 sp.s. c 2 § 43; 1989 c 305 § 16; 1987 c 87 § 9.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.25.180 Recreational licenses—Terms. Recreational licenses issued by the department under this chapter are valid for the following periods:

(1) Recreational licenses issued without charge to persons designated by this chapter are valid for a period of five years.

(2) Three-consecutive-day personal use food fish and shellfish and seaweed licenses expire at midnight on the second day following the validation date written on the license by the license dealer, except three-consecutive-day personal use food fish and shellfish and seaweed licenses validated for December 30 or 31 expire at midnight on December 31.

(3) An annual personal use food fish license or annual personal use shellfish and seaweed license is valid only for the calendar year for which it is issued. [1994 c 255 § 8. Prior: 1993 sp.s. c 17 § 10; 1993 sp.s. c 2 § 44; 1989 c 305 § 14.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.25.190 Catch record cards. Catch record cards necessary for proper management of the state's food fish and shellfish resources shall be administered under rules adopted by the director and issued at no charge. [1989 c 305 § 10.]

75.25.200 Group permits—Exemption from individual license and fee requirement—Conditions. Physically or mentally handicapped persons, mentally ill persons, hospital patients, and senior citizens who are in the care of a state-licensed or state-operated care facility may fish for food fish and shellfish during open season without individual licenses or the payment of individual license fees if such fishing activity is occasional, is conducted in a group supervised by staff of the care facility, and the facility holds a group fishing permit issued by the director. The director shall issue such a permit upon application by care facility staff. [1990 c 35 § 2.]

Legislative intent—1990 c 35: "It is the intent of the legislature to make recreational fishing opportunities more available to physically or mentally handicapped persons, mentally ill persons, hospital patients, and senior citizens who are in the care of a state-licensed or state-operated care facility by allowing the department of fisheries to issue group fishing permits." [1990 c 35 § 1.]

Fishing licenses: RCW 77.32.235.

75.25.210 Duplicate licenses, permits, tags, stamps, and catch record cards—Fees. The director shall by rule establish the conditions for issuance of duplicate licenses, permits, tags, stamps, and catch record cards required by this chapter. The fee for a duplicate provided under this section is ten dollars for those licenses that are ten dollars and over, and for those licenses under ten dollars the duplicate fee is the value of the license. [1994 c 255 § 9.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

75.25.901 Effective date—1987 c 87. This act shall take effect on January 1, 1988. [1987 c 87 § 10.]

75.25.902 Effective date—1989 c 305. This act shall take effect on January 1, 1990. [1989 c 305 § 21.]

Chapter 75.28

COMMERCIAL LICENSES

Sections

- 75.28.010 Commercial licenses and permits required—Exemption.
- 75.28.011 Transfer of licenses—Restrictions—Fees—Inheritability.
- 75.28.012 Licensing districts—Created.
- 75.28.014 Commercial licenses and permits—Application deadline.
- 75.28.020 Commercial licenses—Qualifications—Limited entry license—Nonsalmon delivery license.
- 75.28.030 Application for commercial licenses and permits—Replacement.
- 75.28.034 No commercial fishery during year—License requirement waived or license fees refunded.
- 75.28.040 Licensees subject to statute and rules—Licenses not subject to security interest or lien—Expiration and renewal of licenses.
- 75.28.044 Vessel substitution.
- 75.28.045 Vessel designation.
- 75.28.046 Alternate operator designation—Fee.
- 75.28.047 Sale or delivery of food fish or shellfish—Conditions—Charter boat operation.
- 75.28.048 Vessel operation—License designation—Alternate operator license required.
- 75.28.095 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats.
- 75.28.110 Commercial salmon fishery licenses—Gear and geographic designations—Fees.
- 75.28.113 Salmon delivery license—Fee—Restrictions—Revocation.
- 75.28.116 Emergency salmon delivery license—Fee—Nontransferable, nonrenewable.
- 75.28.120 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas.
- 75.28.125 Nonlimited entry delivery license—Limitations—Fee.
- 75.28.130 Commercial fishery licenses for shellfish fisheries—Fees—Rules for species, gear, and areas.
- 75.28.132 Surcharge on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses—Dungeness crab appeals account.
- 75.28.280 Hardshell clam mechanical harvester fishery license.
- 75.28.290 State oyster reserves—Oyster reserve fishery license.
- 75.28.295 Oyster cultch permit.
- 75.28.300 Wholesale fish dealer's license—Fee—Exemption.
- 75.28.302 Wholesale fish dealer licenses—Display.
- 75.28.305 Wholesale fish dealer may be a fish buyer.
- 75.28.315 Wholesale fish dealers—Documentation of commercial harvest.
- 75.28.323 Wholesale fish dealers—Performance bond.
- 75.28.328 Wholesale fish dealers—Performance bond—Payment of liability.
- 75.28.335 Wholesale fish dealers—Additional penalties.
- 75.28.340 Fish buyer's license.

- 75.28.690 Salmon charter crew member—Salmon roe license—Sale of salmon roe—Conditions.
- 75.28.700 License fee increases—Disposition.
- 75.28.710 Professional salmon guide license.
- 75.28.720 Ocean pink shrimp—Defined.
- 75.28.730 Ocean pink shrimp—Delivery license.
- 75.28.740 Emerging commercial fishery—Trial or experimental fishery—Licenses and permits.
- 75.28.750 Geoduck diver license.
- 75.28.760 Wild salmonid policy—Establishment.
- 75.28.770 Wild salmonid policy—Management strategies and gear types—Report to legislature.
- 75.28.780 Alternate operator—Geoduck diver—Salmon guide—Fees.
- 75.28.900 Effective date—1989 c 316.

Grazing lands: RCW 79.01.295.

Validity of licenses issued by department of fisheries: RCW 77.32.094.

Whiting—Puget Sound fishery license: RCW 75.30.160.

75.28.010 Commercial licenses and permits required—Exemption. (1) Except as otherwise provided by this title, it is unlawful to engage in any of the following activities without a license or permit issued by the director:

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver food fish or shellfish taken in offshore waters;
- (c) Operate a charter boat or commercial fishing vessel engaged in a fishery;
- (d) Engage in processing or wholesaling food fish or shellfish; or
- (e) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [1993 c 340 § 2; 1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511.]

Finding—Intent—1993 c 340: "The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993,

as adjusted under section 19, chapter 316, Laws of 1989." [1993 c 340 § 1.]

Captions not law—1993 c 340: "Section headings as used in this act do not constitute any part of the law." [1993 c 340 § 57.]

Effective date—1993 c 340: "This act shall take effect January 1, 1994." [1993 c 340 § 58.]

Severability—1993 c 340: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 340 § 59.]

75.28.011 Transfer of licenses—Restrictions—Fees—Inheritability. (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is:

(i) The same as the resident license renewal fee if the license is not limited under chapter 75.30 RCW;

(ii) Three and one-half times the resident renewal fee if the license is not a commercial salmon license and the license is limited under chapter 75.30 RCW;

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 75.30 RCW; or

(iv) If a license is transferred from a resident to a non-resident, the difference between the resident and nonresident license fees at the time of transfer, to be paid by the transferee.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate. [1995 c 228 § 1; 1993 sp.s. c 17 § 34.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: "Sections 34 through 47 of this act shall take effect only if Senate Bill No. 5124 becomes law by August 1, 1993." [1993 sp.s. c 17 § 48.] Senate Bill No. 5124 [1993 c 340] did become law. Sections 34 through 47 of 1993 sp.s. c 17 did become law.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.012 Licensing districts—Created.

Reviser's note: RCW 75.28.012 was amended by 1993 c 20 § 3 without reference to its repeal by 1993 c 340 § 56, effective January 1, 1994. It has been decodified for publication purposes pursuant to RCW 1.12.025.

75.28.014 Commercial licenses and permits—Application deadline. The application deadline for a commercial license or permit established in this chapter is December 31 of the calendar year for which the license or permit is sought. The department shall accept no license or permit applications after December 31 of the calendar year for which the license or permit is sought. [1993 c 340 § 3; 1986 c 198 § 8; 1983 1st ex.s. c 46 § 103; 1981 c 201 § 1; 1965 ex.s. c 57 § 1; 1959 c 309 § 4; 1957 c 171 § 3.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.020 Commercial licenses—Qualifications—Limited entry license—Nonsalmon delivery license. (1) Except as otherwise provided in this title, a person as defined in RCW 75.08.011 may hold a commercial license established by this chapter.

(2) Except as otherwise provided in this title, an individual may hold a commercial license only if the individual is sixteen years of age or older and a bona fide resident of the United States.

(3) A corporation may hold a commercial license only if it is authorized to do business in this state.

(4) No person may hold a limited-entry license unless the person meets the qualifications that this title establishes for the license.

(5) The residency requirements in subsection (2) of this section do not apply to holders of nonsalmon delivery licenses. [1994 c 244 § 1; 1993 c 340 § 4; 1989 c 47 § 1; 1983 1st ex.s. c 46 § 104; 1963 c 171 § 1; 1955 c 12 § 75.28.020. Prior: 1953 c 207 § 9; 1949 c 112 § 63; Rem. Supp. 1949 § 5780-501.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.030 Application for commercial licenses and permits—Replacement. (1) Except as otherwise provided in this title, the director shall issue commercial licenses and permits to a qualified person upon receiving a completed application accompanied by the required fee.

(2) An application submitted to the department under this chapter shall contain the name and address of the applicant and any other information required by the department or this title. An applicant for a commercial fishery license, delivery license, or charter license may designate a vessel to be used with the license and up to two alternate operators.

(3) An application submitted to the department under this chapter shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(4) Upon issuing a commercial license under this chapter, the director shall assign the license a unique number that the license shall retain upon renewal. The department shall use the number to record any commercial catch under the license. This does not preclude the department from using other, additional, catch record methods.

(5) The fee to replace a license that has been lost or destroyed is twenty dollars. [1993 sp.s. c 17 § 44; (1993 c 340 § 5 repealed by 1993 sp.s. c 17 § 47); 1983 1st ex.s. c 46 § 105; 1959 c 309 § 7; 1955 c 12 § 75.28.030. Prior:

1953 c 207 § 2; 1949 c 112 § 65; Rem. Supp. 1949 § 5780-503.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.034 No commercial fishery during year—License requirement waived or license fees refunded. If, for any reason, the department does not allow any opportunity for a commercial fishery during a calendar year, the department shall either: (1) Waive the requirement to obtain a license for that commercial fishery for that year; or (2) refund applicable license fees upon return of the license. [1995 c 227 § 1.]

75.28.040 Licensees subject to statute and rules—Licenses not subject to security interest or lien—Expiration and renewal of licenses. (1) A commercial license issued under this chapter permits the license holder to engage in the activity for which the license is issued in accordance with this title and the rules of the department.

(2) No security interest or lien of any kind, including tax liens, may be created or enforced in a license issued under this chapter.

(3) Unless otherwise provided in this title or rules of the department, commercial licenses and permits issued under this chapter expire at midnight on December 31st of the calendar year for which they are issued. In accordance with this title, licenses may be renewed annually upon application and payment of the prescribed license fees. [1996 c 267 § 27; 1993 c 340 § 6; 1983 1st ex.s. c 46 § 108; 1955 c 212 § 2; 1955 c 12 § 75.28.040. Prior: 1949 c 112 § 64; Rem. Supp. 1949 § 5780-502.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.044 Vessel substitution. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for emergency salmon delivery licenses.

(1) The holder of a license subject to this section may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(a) Surrenders the previously issued license to the department;

(b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and

(c) Pays to the department a fee of thirty-five dollars.

(2) Unless the license holder owns all vessels identified on the application described in subsection (1)(b) of this section or unless the vessel is designated on a Dungeness crab—coastal or a Dungeness crab—coastal class B fishery license, the following restrictions apply to changes in vessel designation:

(a) The department shall change the vessel designation on the license no more than four times per calendar year.

(b) The department shall change the vessel designation on the license no more than once in any seven-day period. [1994 c 260 § 11; 1993 sp.s. c 17 § 45.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.045 Vessel designation. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) It is unlawful to take food fish or shellfish in a fishery that requires a vessel except from a vessel designated on a commercial fishery license for that fishery.

(4) It is unlawful to operate a vessel as a charter boat unless the vessel is designated on a charter license.

(5) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries. No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license. [1993 c 340 § 7.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.046 Alternate operator designation—Fee. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for whiting—Puget Sound fishery licenses and emergency salmon delivery licenses.

(1) The license holder may engage in the activity authorized by a license subject to this section. With the exception of Dungeness crab—coastal fishery class B licensees licensed under *RCW 75.30.350(3), the holder of a license subject to this section may also designate up to two alternate operators for the license. Dungeness crab—coastal fishery class B licensees may not designate alternate operators. A person designated as an alternate operator must possess an alternate operator license issued under **section 23 of this act and RCW 75.28.048.

(2) The fee to change the alternate operator designation is twenty-two dollars. [1994 c 260 § 12; 1993 c 340 § 9.]

Reviser's note: *(1) RCW 75.30.350 was amended by 1995 c 252 § 1, changing subsection (3) to subsection (4).

** (2) Section 23 of this act [1993 c 340 § 23] was repealed by 1993 sp.s. c 17 § 47, effective January 1, 1994.

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.047 Sale or delivery of food fish or shellfish—Conditions—Charter boat operation. (1) Only the license holder and any alternate operators designated on the license may sell or deliver food fish or shellfish under a commercial fishery license or delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of food fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) Only the license holder and any alternate operators designated on the license may operate a vessel as a charter boat. [1993 c 340 § 10.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.048 Vessel operation—License designation—Alternate operator license required. (1) A person who holds a commercial fishery license, delivery license, or charter license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license, delivery license, or charter license under RCW 75.28.046.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses, delivery licenses, and charter licenses under RCW 75.28.046.

(4) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel, to operate a vessel as a charter boat, or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state. [1993 c 340 § 25.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.095 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats.

(1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

License or Permit	Annual Fee (RCW 75.50.100 Surcharge)		Governing Section
	Resident	Nonresident	
(a) Nonsalmon charter	\$225	\$375	RCW 75.30.065
(b) Salmon charter	\$380 (plus \$100)	\$685 (plus \$100)	
(c) Salmon angler	\$ 0	\$ 0	RCW 75.30.070
(d) Salmon roe	\$ 95	\$ 95	RCW 75.28.690

(2) Except as provided in subsection (5) of this section, it is unlawful to operate a vessel as a charter boat from which salmon or salmon and other food fish or shellfish are taken without a salmon charter license designating the vessel. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065.

(3) Except as provided in subsections (2) and (5) of this section, it is unlawful to operate a vessel as a charter boat from which food fish or shellfish are taken without a nonsalmon charter license. As used in this subsection, "food fish" does not include salmon.

(4) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and that brings food fish or shellfish into state ports or brings food fish or shellfish taken from state waters into United States ports. The director may specify by rule when a vessel is a "charter boat" within this definition. "Charter boat" does not mean a vessel used by a guide for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations. [1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Severability—1979 c 60: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 60 § 4.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327: "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

Declaration of state policy—1977 ex.s. c 327: "The legislature, recognizing that anadromous salmon within the waters of the state and offshore waters are fished for both recreational and commercial purposes

and that the recreational anadromous salmon fishery is a major recreational and economic asset to the state and improves the quality of life for all residents of the state, declares that it is the policy of the state to enhance and improve recreational anadromous salmon fishing in the state." [1977 ex.s. c 327 § 10. Formerly RCW 75.28.600.]

Severability—1977 ex.s. c 327: "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 327 § 34.]

Effective date—1977 ex.s. c 327: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 327 § 35.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

Limitation on issuance of salmon charter boat licenses: RCW 75.30.065.

Salmon charter boats—Angler permit, when required: RCW 75.30.070.

75.28.110 Commercial salmon fishery licenses—

Gear and geographic designations—Fees. (1) The following commercial salmon fishery licenses are required for the license holder to use the specified gear to fish for salmon in state waters. Only a person who meets the qualifications of RCW 75.30.120 may hold a license listed in this subsection. The licenses and their annual fees and surcharges under RCW 75.50.100 are:

Fishery License	Resident Fee	Nonresident Fee	Surcharge
(a) Salmon Gill Net—Grays Harbor-Columbia river	\$380	\$685	plus \$100
(b) Salmon Gill Net—Puget Sound	\$380	\$685	plus \$100
(c) Salmon Gill Net—Willapa Bay-Columbia river	\$380	\$685	plus \$100
(d) Salmon purse seine	\$530	\$985	plus \$100
(e) Salmon reef net	\$380	\$685	plus \$100
(f) Salmon troll	\$380	\$685	plus \$100

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 75.28.045.

(3) Holders of commercial salmon fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the department.

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection. [1996 c 267 § 28; 1993 sp.s. c 17 § 35; (1993 c 340 § 12 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 3; 1985 c 107 § 1; 1983 1st ex.s. c 46 § 113; 1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780-507(1).]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Limitations on issuance of commercial salmon fishing licenses: RCW 75.30.120.

75.28.113 Salmon delivery license—Fee—

Restrictions—Revocation. (1) It is unlawful to deliver salmon taken in offshore waters to a place or port in the state without a salmon delivery license from the director. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The annual surcharge under RCW 75.50.100 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 75.28.125 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 75.30.120 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW. [1994 c 260 § 22; 1993 sp.s. c 17 § 36; (1993 c 340 § 13 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 4; 1983 1st ex.s. c 46 § 115; 1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9. Formerly RCW 75.18.080.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

Effective dates—1971 ex.s. c 283: "The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The provisions of sections 1 to 10 inclusive of this 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 283 § 16.]

Limitations on issuance of salmon delivery licenses: RCW 75.30.120.

75.28.116 Emergency salmon delivery license—Fee—Nontransferable, nonrenewable. A person who does not qualify for a license under RCW 75.30.120 shall obtain a nontransferable emergency salmon delivery license to make one delivery of salmon taken in offshore waters. The director shall not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred twenty-five dollars for residents and four hundred seventy-five dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable. [1993 sp.s. c 17 § 37; 1993 c 340 § 14 repealed by 1993 sp.s. c 17 § 47; 1989 c 316 § 5; 1984 c 80 § 1. Prior: 1983 1st ex.s. c 46 § 116; 1983 c 297 § 1; 1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3. Formerly RCW 75.28.460.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

Legislative intent—Severability—1974 ex.s. c 184: See notes following RCW 75.30.120.

75.28.120 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas. (1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Baitfish Lampara	\$185	\$295	Yes	No
(b) Baitfish purse seine	\$530	\$985	Yes	No
(c) Bottom fish jig	\$130	\$185	Yes	No
(d) Bottom fish pot	\$130	\$185	Yes	No
(e) Bottom fish troll	\$130	\$185	Yes	No
(f) Carp	\$130	\$185	No	No
(g) Columbia river smelt	\$380	\$685	No	No
(h) Dog fish set net	\$130	\$185	Yes	No
(i) Emerging commercial fishery (RCW 75.30.220 and 75.28.740)	\$185	\$295	Determined by rule	Determined by rule
(j) Food fish drag seine	\$130	\$185	Yes	No
(k) Food fish set line	\$130	\$185	Yes	No
(l) Food fish trawl—Non-Puget Sound	\$240	\$405	Yes	No
(m) Food fish trawl—Puget Sound	\$185	\$295	Yes	No
(n) Herring dip bag net (RCW 75.30.140)	\$175	\$275	Yes	Yes
(o) Herring drag seine (RCW 75.30.140)	\$175	\$275	Yes	Yes
(p) Herring gill net (RCW 75.30.140)	\$175	\$275	Yes	Yes
(q) Herring Lampara (RCW 75.30.140)	\$175	\$275	Yes	Yes
(r) Herring purse seine (RCW 75.30.140)	\$175	\$275	Yes	Yes
(s) Herring spawn-on-kelp	N/A	N/A	Yes	Yes

(RCW 75.30.270)				
(t) Smelt dip bag net	\$130	\$185	No	No
(u) Smelt gill net	\$380	\$685	Yes	No
(v) Whiting—Puget Sound (RCW 75.30.170)	\$295	\$520	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery. [1993 sp.s. c 17 § 38; (1993 c 340 § 15 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 6; 1983 1st ex.s. c 46 § 117; 1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2).]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Limitation on commercial herring fishing: RCW 75.30.140.

75.28.125 Nonlimited entry delivery license—Limitations—Fee. (1) Except as provided in subsection (2) of this section, it is unlawful to deliver with a commercial fishing vessel food fish or shellfish taken in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp or coastal crab. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents.

(2) Holders of salmon troll fishery licenses issued under RCW 75.28.110, salmon delivery licenses issued under RCW 75.28.113, crab pot fishery licenses issued under RCW 75.28.130, food fish trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.120, Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, and shrimp trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.130 may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters. [1994 c 260 § 21. Prior: 1993 sp.s. c 17 § 39; 1993 c 376 § 3; (1993 c 340 § 16 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 7; 1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.085.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.28.130 Commercial fishery licenses for shellfish fisheries—Fees—Rules for species, gear, and areas. (1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Burrowing shrimp	\$185	\$295	Yes	No
(b) Crab ring net— Non-Puget Sound	\$130	\$185	Yes	No
(c) Crab ring net— Puget Sound	\$130	\$185	Yes	No
(d) Dungeness crab— coastal (RCW 75.30.350)	\$295	\$520	Yes	Yes
(e) Dungeness crab— coastal, class B (RCW 75.30.350)	\$295	\$520	Yes	Yes
(f) Dungeness crab— Puget Sound (RCW 75.30.130)	\$130	\$185	Yes	Yes
(g) Emerging commercial fishery (RCW 75.30.220 and 75.28.740)	\$185	\$295	Determined by rule	Determined by rule
(h) Geoduck (RCW 75.30.280)	\$ 0	\$ 0	Yes	Yes
(i) Hardshell clam mechanical harvester (RCW 75.28.280)	\$530	\$985	Yes	No
(j) Oyster reserve (RCW 75.28.290)	\$130	\$185	No	No
(k) Razor clam	\$130	\$185	No	No
(l) Sea cucumber dive (RCW 75.30.250)	\$130	\$185	Yes	Yes
(m) Sea urchin dive (RCW 75.30.210)	\$130	\$185	Yes	Yes
(n) Shellfish dive	\$130	\$185	Yes	No
(o) Shellfish pot	\$130	\$185	Yes	No
(p) Shrimp pot— Hood Canal	\$325	\$575	Yes	No
(q) Shrimp trawl— Non-Puget Sound	\$240	\$405	Yes	No
(r) Shrimp trawl— Puget Sound	\$185	\$295	Yes	No
(s) Squid	\$185	\$295	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery. [1994 c 260 § 14; 1993 sp.s. c 17 § 40; (1993 c 340 § 17 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 8; 1983 1st ex.s. c 46 § 120; 1977 ex.s. c 327 § 6; 1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130. Prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3).]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

(1996 Ed.)

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.28.095.

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

Dungeness crab—Puget Sound fishery license endorsement: RCW 75.30.130.

75.28.132 Surcharge on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses—Dungeness crab appeals account. A surcharge of fifty dollars shall be collected with each Dungeness crab—coastal fishery license issued under RCW 75.28.130 until June 30, 2000, and with each Dungeness crab—coastal class B fishery license issued under RCW 75.28.130 until December 31, 1997. Moneys collected under this section shall be placed in the Dungeness crab appeals account hereby created in the state treasury. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used for processing appeals related to the issuance of Dungeness crab—coastal fishery licenses. [1994 c 260 § 15.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.28.280 Hardshell clam mechanical harvester fishery license. A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, unless the requirements of RCW 75.20.100 are fulfilled for the proposed activity. [1993 c 340 § 19; 1989 c 316 § 12; 1985 c 457 § 19; 1983 1st ex.s. c 46 § 125; 1979 ex.s. c 141 § 3; 1969 ex.s. c 253 § 3; 1955 c 212 § 8; 1955 c 12 § 75.28.280. Prior: 1951 c 271 § 26; 1949 c 112 § 70; Rem. Supp. 1949 § 5780-508.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

75.28.290 State oyster reserves—Oyster reserve fishery license. A person who commercially takes shellfish from state oyster reserves under RCW 75.24.070 must have an oyster reserve fishery license. [1993 c 340 § 20; 1989 c 316 § 14; 1983 1st ex.s. c 46 § 131; 1969 ex.s. c 91 § 2; 1955 c 12 § 75.28.290. Prior: 1951 c 271 § 27; 1949 c 112 § 71; Rem. Supp. 1949 § 5780-509.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.295 Oyster cultch permit. An oyster cultch permit is required for commercial cultching of oysters on state oyster reserves. The director shall require that ten percent of the cultch bags or other collecting materials be provided to the state after the oysters have set, for the purposes of increasing the supply of oysters on state oyster reserves and enhancing oyster supplies on public beaches. [1989 c 316 § 15.]

75.28.300 Wholesale fish dealer's license—Fee—Exemption. A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishermen who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish.

(5) A business employing a fish buyer as defined under RCW 75.28.340.

The annual license fee for a wholesale dealer is two hundred fifty dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [1993 sp.s. c 17 § 43; 1989 c 316 § 16. Prior: 1985 c 457 § 20; 1985 c 248 § 1; 1983 1st ex.s. c 46 § 132; 1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300; prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1).]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.302 Wholesale fish dealer licenses—Display. Wholesale fish dealer licenses shall be displayed at the business premises of the licensee. [1993 c 340 § 52; 1983 1st ex.s. c 46 § 110; 1955 c 12 § 75.28.070. Prior: 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part. Formerly RCW 75.28.070.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.305 Wholesale fish dealer may be a fish buyer. A wholesale dealer who is an individual may be a fish buyer. [1985 c 248 § 3.]

75.28.315 Wholesale fish dealers—Documentation of commercial harvest. Wholesale fish dealers are responsible for documenting the commercial harvest of food fish and shellfish according to the rules of the department. The director may allow only wholesale fish dealers or their designees to receive the forms necessary for the accounting of the commercial harvest of food fish and shellfish. [1996 c 267 § 29; 1985 c 248 § 4.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.28.323 Wholesale fish dealers—Performance bond. (1) A wholesale fish dealer shall not take possession of food fish or shellfish until the dealer 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 chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to one thousand dollars for each buyer engaged by the wholesale dealer. In no case shall the bond be less than two thousand dollars nor more than fifty thousand dollars.

(2) A wholesale dealer shall, within seven days of engaging additional fish buyers, notify the department and increase the amount of the bonding required in subsection (1) of this section.

(3) The director may suspend and refuse to reissue a wholesale fish dealer's license of a dealer who has taken possession of food fish or shellfish without an acceptable performance bond on deposit with the department.

(4) The bond shall be conditioned upon the compliance with the requirements of this chapter and rules of the department relating to the payment of fines for violations of rules for the accounting of the commercial harvest of food fish or shellfish. In lieu of the surety bond required by this section the wholesale fish dealer may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department.

(5) Liability under the bond shall be maintained as long as the wholesale fish dealer engages in activities under RCW 75.28.300 unless released. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon acceptance by the department of a substitute bond or forty-five days after the expiration of the wholesale fish dealer's annual license. In no event shall the liability of the surety exceed the amount of the surety bond required under this chapter. [1996 c 267 § 30; 1985 c 248 § 6.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

75.28.328 Wholesale fish dealers—Performance bond—Payment of liability. The director shall promptly notify by order a wholesale dealer and the appropriate surety when a violation of rules relating to the accounting of commercial harvest has occurred. The notification shall specify the type of violation, the liability to be imposed for damages caused by the violation, and a notice that the amount of liability is due and payable to the department by the wholesale fish dealer and the surety.

If the amount specified in the order is not paid within thirty days after receipt of the notice, the prosecuting attorney for any county in which the persons to whom the order is directed do business, or the attorney general upon request of the department, may 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 order is directed do business to recover the amount specified in the final order

of the department. The surety shall be liable to the state to the extent of the bond. [1985 c 248 § 7.]

75.28.335 Wholesale fish dealers—Additional penalties. The liabilities imposed upon a wholesale fish dealer by this chapter shall be in addition to the penalties authorized in chapter 75.10 RCW. [1985 c 248 § 8.]

Wholesale fish dealers—Penalties: RCW 75.10.150.

75.28.340 Fish buyer's license. (1) A fish buyer's license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisherman. A fish buyer may represent only one wholesale fish dealer.

(2) Unless adjusted by the director pursuant to the director's authority granted in *RCW 75.28.065, the annual fee for a fish buyer's license is ninety-five dollars. [1993 sp.s. c 17 § 46; 1989 c 316 § 17; 1985 c 248 § 2.]

*Reviser's note: RCW 75.28.065 was repealed by 1993 sp.s. c 17 § 31, effective January 1, 1994.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.690 Salmon charter crew member—Salmon roe license—Sale of salmon roe—Conditions. (1) A salmon roe license is required for a crew member on a boat designated on a salmon charter license to sell salmon roe as provided in subsection (2) of this section. An individual under sixteen years of age may hold a salmon roe license.

(2) A crew member on a boat designated on a salmon charter license may sell salmon roe taken from fish caught for personal use, subject to rules of the department and the following conditions:

(a) The salmon is taken by an angler fishing on the charter boat;

(b) The roe is the property of the angler until the roe is given to the crew member. The crew member shall notify the charter boat's passengers of this fact;

(c) The crew member sells the roe to a licensed wholesale dealer; and

(d) The crew member is licensed as provided in subsection (1) of this section and has the license in possession whenever the crew member sells salmon roe. [1996 c 267 § 31; 1993 c 340 § 22; 1989 c 316 § 18; 1983 1st ex.s. c 46 § 137; 1981 c 227 § 2.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.700 License fee increases—Disposition. All revenues generated from the license fee increases in *sections 1 through 14 and 16 through 19 of this act shall be deposited in the general fund and shall be appropriated for the food fish and shellfish enhancement programs. [1989 c 316 § 20.]

*Reviser's note: "Sections 1 through 14 and 16 through 19 of this act" consist of the enactment of RCW 75.28.065 and the 1989 c 316 amendments to RCW 75.28.035, 75.28.095, 75.28.110, 75.28.113, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.134, 75.28.140,

75.28.255, 75.28.280, 75.28.287, 75.28.290, 75.28.300, 75.28.340, and 75.28.690.

75.28.710 Professional salmon guide license. (1) It is unlawful to offer or perform the services of a professional salmon guide in the taking of salmon for personal use in freshwater rivers and streams, other than in that part of the Columbia river below the bridge at Longview, without a professional salmon guide license.

(2) Only an individual at least sixteen years of age may hold a professional salmon guide license. No individual may hold more than one professional salmon guide license. [1993 c 340 § 26; 1991 c 362 § 2.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.720 Ocean pink shrimp—Defined. Unless the context clearly requires otherwise, as used in this chapter "ocean pink shrimp" means the species *Pandalus jordani*. [1993 c 376 § 2.]

Findings—1993 c 376: "The legislature finds that the offshore Washington, Oregon, and California commercial ocean pink shrimp fishery is composed of a mobile fleet, fishing the entire coast from Washington to California and landing its catch in the state nearest the area being fished. The legislature further finds that the ocean pink shrimp fishery currently uses the entire available resource, and has the potential to become overcapitalized. The legislature further finds that overcapitalization can lead to economic destabilization, and that reductions in fishing opportunities from licensing restrictions imposed for conservation needs and the economic well-being of the ocean pink shrimp industry creates uncertainty. The legislature further finds that it is [in] the best interest of the ocean pink shrimp resource, commercial ocean pink shrimp fishers, and ocean pink shrimp processors in the state, to limit the number of fishers who make landings of ocean pink shrimp into the state of Washington to those persons who have historically and continuously participated in the ocean pink shrimp fishery." [1993 c 376 § 1.]

Effective date—1993 c 376: "This act shall take effect January 1, 1994." [1993 c 376 § 12.]

75.28.730 Ocean pink shrimp—Delivery license. An ocean pink shrimp delivery license is required to deliver ocean pink shrimp taken in offshore waters and delivered to a port in the state. Unless adjusted by the director pursuant to the director's authority granted in *RCW 75.28.065, the annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. Ocean pink shrimp delivery licenses are transferable. [1993 c 376 § 4.]

*Reviser's note: RCW 75.28.065 was repealed by 1993 sp.s. c 17 § 31, effective January 1, 1994.

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

75.28.740 Emerging commercial fishery—Trial or experimental fishery—Licenses and permits. (1) The director may by rule designate a fishery as an emerging commercial fishery. The director shall include in the designation whether the fishery is one that requires a vessel.

(2) "Emerging commercial fishery" means the commercial taking of a newly classified species of food fish or shellfish, the commercial taking of a classified species with gear not previously used for that species, or the commercial taking of a classified species in an area from which that species has not previously been commercially taken. Any species of food fish or shellfish commercially harvested in

Washington state as of June 7, 1990, may be designated as a species in an emerging commercial fishery, except that no fishery subject to a license limitation program in chapter 75.30 RCW may be designated as an emerging commercial fishery.

(3) It is unlawful to take food fish or shellfish in a fishery designated as an emerging commercial fishery without an emerging commercial fishery license and a permit from the director. The director shall issue two types of permits to accompany emerging commercial fishery licenses: Trial fishery permits and experimental fishery permits. Trial fishery permits are governed by subsection (4) of this section. Experimental fishery permits are governed by RCW 75.30.220.

(4) The director shall issue trial fishery permits for a fishery designated as an emerging commercial fishery unless the director determines there is a need to limit the number of participants under RCW 75.30.220. A person who meets the qualifications of RCW 75.28.020 may hold a trial fishery permit. The holder of a trial fishery permit shall comply with the terms of the permit. Trial fishery permits are not transferable from the permit holder to any other person. [1993 c 340 § 18.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.28.750 Geoduck diver license. Every diver engaged in the commercial harvest of geoduck clams shall obtain a nontransferable geoduck diver license. [1993 c 340 § 24; 1990 c 163 § 6; 1989 c 316 § 13; 1983 1st ex.s. c 46 § 130; 1979 ex.s. c 141 § 4; 1969 ex.s. c 253 § 4. Formerly RCW 75.28.287.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

Designation of aquatic lands for geoduck harvesting: RCW 79.96.085.
Geoducks, harvesting for commercial purposes—License: RCW 75.24.100.

75.28.760 Wild salmonid policy—Establishment. By July 1, 1994, the *departments of fisheries and wildlife jointly with the appropriate Indian tribes, shall each establish a wild salmonid policy. The policy shall ensure that department actions and programs are consistent with the goals of rebuilding wild stock populations to levels that permit commercial and recreational fishing opportunities. [1993 sp.s. c 4 § 2.]

***Reviser's note:** Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.01.2951.
Instream flows: RCW 90.22.060.

Salmon, impact of water diversion: RCW 90.03.360.

75.28.770 Wild salmonid policy—Management strategies and gear types—Report to legislature. The department shall evaluate and recommend, in consultation with the Indian tribes, salmon fishery management strategies and gear types, as well as a schedule for implementation, that will minimize the impact of commercial and recreational fishing in the mixed stock fishery on critical and depressed

wild stocks of salmonids. As part of this evaluation, the department, in conjunction with the commercial and recreational fishing industries, shall evaluate commercial and recreational salmon fishing gear types developed by these industries. The department shall present status reports to the appropriate committees of the legislature by December 31 of each year in 1993, 1994, and 1995, and shall present the final evaluation and recommendations by December 31, 1996. [1994 c 264 § 46; 1993 sp.s. c 4 § 4.]

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.01.2951.

75.28.780 Alternate operator—Geoduck diver—Salmon guide—Fees. The director shall issue the personal licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 75.50.100 Surcharge)		Governing Section
	Resident	Nonresident	
(1) Alternate Operator	\$ 35	\$ 35	RCW 75.28.048
(2) Geoduck Diver	\$185	\$295	RCW 75.28.750
(3) Salmon Guide	\$130 (plus \$20)	\$630 (plus \$100)	RCW 75.28.710

[1993 sp.s. c 17 § 42.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.900 Effective date—1989 c 316. This act shall take effect on January 1, 1990. The *director of fisheries may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 316 § 22.]

***Reviser's note:** Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

Chapter 75.30

LICENSE LIMITATION PROGRAMS

Sections

- 75.30.021 No harvest opportunity during year—License requirements waived—Effect on license limitation programs.
- 75.30.050 Advisory review boards.
- 75.30.055 Regional advisory committees abolished.
- 75.30.060 Administrative review of department's decision—Hearing—Procedures.
- 75.30.065 Salmon charter boats—Limitation on issuance of licenses—Renewal—Transfer.
- 75.30.070 Salmon charter boats—Angler permit, when required.
- 75.30.090 Salmon charter boats—Angler permit—Number of anglers.
- 75.30.100 Salmon charter boats—Angler permit—Total number of anglers limited—Permit transfer.
- 75.30.120 Commercial salmon fishing licenses and delivery licenses—Limitations—Transfer.
- 75.30.125 Commercial salmon fishery license or salmon delivery license—Reversion to department following government confiscation of vessel.
- 75.30.130 Dungeness crab—Puget Sound fishery license—Limitations—Qualifications.
- 75.30.140 Herring fishery license—Limitations on issuance.
- 75.30.160 Whiting license required in designated areas.
- 75.30.170 Whiting—Puget Sound fishery license—Limitation on issuance.

- 75.30.180 Whiting—Puget Sound fishery license—Transferable to family members.
- 75.30.210 Sea urchin dive fishery license—Limitation on issuance—Transfer limitations—Issuance of additional licenses.
- 75.30.220 Emerging commercial fishery designation—Experimental fishery permits.
- 75.30.230 Emerging commercial fishery designation—Legislative review.
- 75.30.240 Emerging commercial fishery—License status—Recommendations to legislature.
- 75.30.250 Sea cucumber dive fishery license—Requirements.
- 75.30.260 Herring spawn on kelp fishery licenses—Number limited.
- 75.30.270 Herring spawn on kelp fishery license—Auction.
- 75.30.280 Geoduck fishery license—Conditions and limitations—OSHA regulations—Violations.
- 75.30.290 Ocean pink shrimp—Delivery license—Requirements and criteria—Continuous participation.
- 75.30.300 Ocean pink shrimp—Delivery license—Requirements and criteria—Historical participation.
- 75.30.310 Ocean pink shrimp—Delivery license—License transfer—License suspension.
- 75.30.320 Ocean pink shrimp—Single delivery license.
- 75.30.330 Ocean pink shrimp—Delivery license—Reduction of landing requirement.
- 75.30.350 Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined.
- 75.30.360 Crab taken in offshore waters—Criteria for landing in Washington state—Limitations.
- 75.30.370 Crab taken in offshore waters—Dungeness crab offshore delivery license—Fee.
- 75.30.380 Transfer of Dungeness crab-coastal fishery licenses—Fee—Affidavit and survey required.
- 75.30.390 Coastal crab account—Surcharge on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses.
- 75.30.400 Coastal crab account expenditures—Purchase of Dungeness crab-coastal class B fishery licenses.
- 75.30.410 Coastal crab account expenditures—Management of coastal crab resource.
- 75.30.420 Criteria for nonresident Dungeness crab-coastal fishery license for Oregon residents—Section effective contingent upon reciprocal statutory authority in Oregon.
- 75.30.430 Restrictions on designations and substitutions on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses.
- 75.30.440 Dungeness crab-coastal fishery licenses—Limitation on new licenses—Requirements for renewal.
- 75.30.450 Limitation on taking crab in the exclusive economic zone of Oregon or California—Section effective contingent upon reciprocal legislation by both Oregon and California.
- 75.30.460 Dungeness crab-coastal fishery licenses—Criteria for issuing new licenses.
- 75.30.470 Reduction of landing requirements under RCW 75.30.350—Procedure.
- 75.30.480 Coastal Dungeness crab resource plan.

75.30.021 No harvest opportunity during year—License requirements waived—Effect on license limitation programs. (1) The department shall waive license requirements, including landing or poundage requirements, if, during the calendar year that a license issued pursuant to chapter 75.28 RCW is valid, no harvest opportunity occurs in the fishery corresponding to the license.

(2) For each license limitation program, where the person failed to hold the license and failed to make landing or poundage requirements because of a license waiver by the department during the previous year, the person shall qualify for a license by establishing that the person held the license during the last year in which the license was not waived. [1995 c 227 § 2.]

75.30.050 Advisory review boards. (1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) The commercial crab fishing industry in cases involving Dungeness crab—Puget Sound fishery licenses;

(b) The commercial herring fishery in cases involving herring fishery licenses;

(c) The commercial sea urchin and sea cucumber fishery in cases involving sea urchin and sea cucumber dive fishery licenses;

(d) The commercial ocean pink shrimp industry (*Pandalus jordani*) in cases involving ocean pink shrimp delivery licenses; and

(e) The commercial coastal crab fishery in cases involving Dungeness crab—coastal fishery licenses and Dungeness crab—coastal class B fishery licenses. The members shall include one person from the commercial crab processors, one Dungeness crab—coastal fishery license holder, and one citizen representative of a coastal community.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050, 43.03.060, and 43.03.065. [1995 c 269 § 3101. Prior: 1994 sp.s. c 9 § 807; 1994 c 260 § 18; prior: 1993 c 376 § 9; 1993 c 340 § 27; 1990 c 61 § 3; 1989 c 37 § 3; 1986 c 198 § 7; 1983 1st ex.s. c 46 § 138; 1977 ex.s. c 106 § 5.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative finding—1990 c 61: See note following RCW 75.30.220.

Legislative finding—1989 c 37: See note following RCW 75.30.210.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.055 Regional advisory committees abolished.

The director of the department of fish and wildlife shall abolish the department's regional advisory committees, effective July 1, 1994. [1994 sp.s. c 9 § 808.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

75.30.060 Administrative review of department's decision—Hearing—Procedures. A person aggrieved by a decision of the department under this chapter may request administrative review under the informal procedure established by this section.

In an informal hearing before a review board, the rules of evidence do not apply. A record of the proceeding shall be kept as provided by chapter 34.05 RCW. After hearing the case the review board shall notify in writing the commis-

sion and the initiating party whether the review board agrees or disagrees with the department's decision and the reasons for the board's findings. Upon receipt of the board's findings the commission may order such relief as the commission deems appropriate under the circumstances.

Nothing in this section: (1) Impairs an aggrieved person's right to proceed under chapter 34.05 RCW; or (2) imposes a liability on members of a review board for their actions under this section. [1995 1st sp.s. c 2 § 32 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 139; 1977 ex.s. c 106 § 6.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.065 Salmon charter boats—Limitation on issuance of licenses—Renewal—Transfer. (1) After May 28, 1977, the director shall issue no new salmon charter licenses. A person may renew an existing salmon charter license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(2) Salmon charter licenses may be renewed each year. A salmon charter license which is not renewed each year shall not be renewed further.

(3) Subject to the restrictions in *section 11 of this act, salmon charter licenses are transferrable from one license holder to another. [1993 c 340 § 28; 1983 1st ex.s. c 46 § 141; 1981 c 202 § 1; 1979 c 101 § 7; 1977 ex.s. c 106 § 2. Formerly RCW 75.30.020.]

***Reviser's note:** Section 11 of this act [1993 c 340 § 11] was repealed by 1993 sp.s. c 17 § 47, effective January 1, 1994.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—Intent—1979 c 101: See notes following RCW 75.30.070.

Legislative findings—1977 ex.s. c 106: "The legislature finds that the wise management and economic health of the state's salmon fishery are of continued importance to the people of the state and to the economy of the state as a whole. The legislature finds that charter boats licensed by the state for use by the state's charter boat fishing industry have increased in quantity. The legislature finds that limitations on the number of licensed charter boats will tend to improve the management of the charter boat fishery and the economic health of the charter boat industry. The state therefore must use its authority to regulate the number of licensed boats in use by the state's charter boat industry in a manner provided in this chapter so that management and economic health of the salmon fishery may be improved." [1977 ex.s. c 106 § 1. Formerly RCW 75.30.010.]

Severability—1977 ex.s. c 106: "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 106 § 10.]

75.30.070 Salmon charter boats—Angler permit, when required. (1) Except as provided in subsection (3) of this section, it is unlawful to operate a vessel as a charter boat from which salmon are taken in salt water without an angler permit. The angler permit shall specify the maximum number of persons that may fish from the charter boat per

trip. The angler permit expires if the salmon charter license is not renewed.

(2) Only a person who holds a salmon charter license issued under RCW 75.28.095 and 75.30.065 may hold an angler permit.

(3) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations. [1993 c 340 § 29; 1989 c 147 § 2; 1983 1st ex.s. c 46 § 142; 1979 c 101 § 2.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—1979 c 101: "This act shall take effect on January 1, 1980." [1979 c 101 § 10.]

Intent—1979 c 101: "The legislature finds that wise management of the state's salmon fishery is essential to the well-being of the state. The legislature recognizes that further restrictions on salmon fishing in the charter salmon industry are necessary and that a limitation on the number of persons fishing is preferable to reductions in the fishing season or daily bag limits, or increases in size limits." [1979 c 101 § 1.]

75.30.090 Salmon charter boats—Angler permit—Number of anglers. A salmon charter boat may not carry more anglers than the number specified in the angler permit issued under RCW 75.30.070. Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time. [1993 c 340 § 30; 1983 1st ex.s. c 46 § 143; 1979 c 101 § 4.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—Intent—1979 c 101: See notes following RCW 75.30.070.

75.30.100 Salmon charter boats—Angler permit—Total number of anglers limited—Permit transfer. (1) The total number of anglers authorized by the department shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 75.30.070 are transferable. All or a portion of the permit may be transferred to another salmon charter license holder.

(3) The angler permit holder and proposed transferee shall notify the department when transferring an angler permit, and the department shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the department shall issue a new angler permit certificate reflecting the decrease in angler capacity.

(4) The department shall collect a fee of ten dollars for each certificate issued under subsection (3) of this section. [1993 c 340 § 31; 1983 1st ex.s. c 46 § 144; 1979 c 101 § 5.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—Intent—1979 c 101: See notes following RCW 75.30.070.

75.30.120 Commercial salmon fishing licenses and delivery licenses—Limitations—Transfer. (1) Except as provided in subsection (2) of this section, after May 6, 1974, the director shall issue no new commercial salmon fishery licenses or salmon delivery licenses. A person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(2) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(3) Subject to the restrictions in RCW 75.28.011, commercial salmon fishery licenses and salmon delivery licenses are transferable from one license holder to another. [1995 c 135 § 7. Prior: 1993 c 340 § 32; 1993 c 100 § 1; 1983 1st ex.s. c 46 § 146; 1979 c 135 § 1; 1977 ex.s. c 230 § 1; 1977 ex.s. c 106 § 7; 1974 ex.s. c 184 § 2. Formerly RCW 75.28.455.]

Intent—1995 c 135: See note following RCW 29.04.160.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

Legislative intent—1974 ex.s. c 184: "The legislature finds that the protection, welfare, and economic good of the commercial salmon fishing industry is of paramount importance to the people of this state. Scientific advancement has increased the efficiency of salmon fishing gear. There presently exists an overabundance of commercial salmon fishing gear in our state waters which causes great pressure on the salmon fishery resource. This situation results in great economic waste to the state and prohibits conservation programs from achieving their goals. The public welfare requires that the number of commercial salmon fishing licenses and salmon delivery permits issued by the state be limited to insure that sound conservation programs can be scientifically carried out. It is the intention of the legislature to preserve this valuable natural resource so that our food supplies from such resource can continue to meet the ever increasing demands placed on it by the people of this state." [1983 1st ex.s. c 46 § 136; 1974 ex.s. c 184 § 1. Formerly RCW 75.28.450.]

Severability—1974 ex.s. c 184: "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 184 § 11.]

75.30.125 Commercial salmon fishery license or salmon delivery license—Reversion to department following government confiscation of vessel. Any commercial salmon fishery license issued under RCW 75.28.110 or salmon delivery license issued under RCW 75.28.113 shall revert to the department when any government confiscates and sells the vessel designated on the license. Upon application of the person named on the license as license holder and the approval of the director, the department shall transfer the license to the applicant. Application for transfer of the license must be made within the calendar year for which the license was issued. [1993 c 340 § 33; 1986 c 198 § 2.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.130 Dungeness crab—Puget Sound fishery license—Limitations—Qualifications. (1) It is unlawful to

take dungeness crab (*Cancer magister*) in Puget Sound without first obtaining a dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) Except as provided in subsections (3) and (7) of this section, after January 1, 1982, the director shall issue no new dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) The person shall have held the dungeness crab—Puget Sound fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person; and

(b) The person shall document, by valid shellfish receiving tickets issued by the department, that one thousand pounds of dungeness crab were caught and sold during the previous two-year period ending on December 31st of an odd-numbered year:

(i) Under the license sought to be renewed; or

(ii) Under any combination of the following commercial fishery licenses that the person held when the crab were caught and sold: Crab pot—Non-Puget Sound, crab ring net—Non-Puget Sound, dungeness crab—Puget Sound. Sales under a license other than the one sought to be renewed may be used for the renewal of no more than one dungeness crab—Puget Sound fishery license.

(3) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(4) The director may reduce or waive the poundage requirement established under subsection (2)(b) of this section upon the recommendation of a review board established under RCW 75.30.050. The review board may recommend a reduction or waiver of the poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the poundage requirement. The director shall adopt rules governing the operation of the review boards and defining "extenuating circumstances."

(5) This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than dungeness crab.

(6) Subject to the restrictions in *section 11 of this act, dungeness crab—Puget Sound fishery licenses are transferable from one license holder to another.

(7) If fewer than two hundred persons are eligible for dungeness crab—Puget Sound fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain two hundred licenses in the Puget Sound dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new dungeness crab—Puget Sound fishery licenses, based upon recommendations of a board of review

established under RCW 75.30.050. [1993 c 340 § 34; 1983 1st ex.s. c 46 § 147; 1982 c 157 § 1; 1980 c 133 § 4. Formerly RCW 75.28.275.]

***Reviser's note:** Section 11 of this act [1993 c 340 § 11] was repealed by 1993 sp.s. c 17 § 47, effective January 1, 1994.

Finding, intent—Captions not law—Effective date—Severability— 1993 c 340: See notes following RCW 75.28.010.

Severability—1980 c 133: "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 133 § 8.]

Legislative findings—1980 c 133: "The legislature finds that a significant commercial crab fishery is developing within Puget Sound. The legislature further finds that the crab fishery in Puget Sound represents a separate and distinct fishery from that of the coastal waters and is limited in quantity and is in need of conservation. The potential for depletion of the crab stocks in these waters is increasing, particularly as crab fishing becomes an attractive alternative to fishermen facing increasing restrictions on commercial salmon fishing.

The legislature finds that the number of commercial fishermen engaged in crab fishing has steadily increased. This factor, combined with advances in fishing and marketing techniques, has resulted in strong pressures on the supply of crab, unnecessary waste of an important natural resource, and economic loss to the citizens of the state.

The legislature finds that increased regulation of commercial crab fishing is necessary to preserve and efficiently manage the commercial crab fishery in the waters of Puget Sound." [1980 c 133 § 1.]

75.30.140 Herring fishery license—Limitations on issuance. (1) It is unlawful to fish commercially for herring in state waters without a herring fishery license. As used in this section, "herring fishery license" means any of the following commercial fishery licenses issued under RCW 75.28.120: Herring dip bag net; herring drag seine; herring gill net; herring lampara; herring purse seine.

(2) Except as provided in this section, a herring fishery license may be issued only to a person who:

(a) Established initial eligibility for a herring fishery license as provided in subsection (3) of this section or acquired such a license by transfer;

(b) Held a herring fishery license during the previous year or acquired such a license by transfer; and

(c) Has not subsequently transferred the license to another person.

(3) A person may establish initial eligibility for a herring fishery license by:

(a) Documenting to the department that the person landed herring during the period January 1, 1971, through April 15, 1973;

(b) Documenting to the department that the person landed herring during the period January 1, 1969, through December 31, 1970, if the person was in the armed forces of the United States during the period January 1, 1971, through April 15, 1973; or

(c) Applying to the department and qualifying for a herring fishery license under hardship criteria established by rule of the director.

Landings may be documented only by a department fish receiving ticket.

(4) A herring fishery license may be issued only for the type of fishing gear used to establish initial eligibility for the license.

(5) The director may establish rules governing the administration of this section based upon recommendations of a board of review established under RCW 75.30.050.

(6) Except as provided in subsection (8) of this section, after January 1, 1995, the director shall issue no new herring fishery licenses. After January 1, 1995, a person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(7) Herring fishery licenses may be renewed each year. A herring fishery license that is not renewed each year shall not be renewed further.

(8) The department may issue additional herring fishery licenses if the stocks of herring will not be jeopardized by granting additional licenses.

(9) Subject to the restrictions of *section 11 of this act, herring fishery licenses are transferable from one license holder to another. [1993 c 340 § 35; 1983 1st ex.s. c 46 § 148; 1974 ex.s. c 104 § 1; 1973 1st ex.s. c 173 § 4. Formerly RCW 75.28.420.]

***Reviser's note:** Section 11 of this act [1993 c 340 § 11] was repealed by 1993 sp.s. c 17 § 47, effective January 1, 1994.

Finding, intent—Captions not law—Effective date—Severability— 1993 c 340: See notes following RCW 75.28.010.

Legislative findings—Purpose—1973 1st ex.s. c 173: "The legislature finds that a significant commercial herring fishing industry is presently developing in the state of Washington under the careful guidance of the department of fisheries. The legislature further finds that the stocks of herring within the waters of this state are limited in extent and are in need of strict preservation.

In addition, the legislature finds that the number of commercial fishermen engaged in fishing for herring has steadily increased. This factor, combined with advances made in fishing and marketing techniques, has resulted in strong pressures on the supply of herring, unnecessary waste in one of Washington's valuable resources, and economic loss to the citizens of this state. Therefore, it is the purpose of RCW 75.30.140 to establish reasonable procedures for controlling the extent of commercial herring fishing." [1983 1st ex.s. c 46 § 135; 1973 1st ex.s. c 173 § 2. Formerly RCW 75.28.390 and 75.28.400.]

75.30.160 Whiting license required in designated areas. It is unlawful to take whiting from areas that the department designates within the waters described in RCW 75.28.110(5)(a) without a whiting—Puget Sound fishery license. [1993 c 340 § 38; 1986 c 198 § 6.]

Finding, intent—Captions not law—Effective date—Severability— 1993 c 340: See notes following RCW 75.28.010.

75.30.170 Whiting—Puget Sound fishery license—Limitation on issuance. (1) A whiting—Puget Sound fishery license may be issued only to an individual who:

(a) Delivered at least fifty thousand pounds of whiting during the period from January 1, 1981, through February 22, 1985, as verified by fish delivery tickets;

(b) Possessed, on January 1, 1986, all equipment necessary to fish for whiting; and

(c) Held a whiting—Puget Sound fishery license during the previous year or acquired such a license by transfer from someone who held it during the previous year.

(2) After January 1, 1995, the director shall issue no new whiting—Puget Sound fishery licenses. After January 1, 1995, only an individual who meets the following qualifications may renew an existing license: The individual shall have held the license sought to be renewed during the previous year or acquired the license by transfer from

someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) Whiting—Puget Sound fishery licenses may be renewed each year. A whiting—Puget Sound fishery license that is not renewed each year shall not be renewed further. [1993 c 340 § 39; 1986 c 198 § 5.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.180 Whiting—Puget Sound fishery license—Transferable to family members. A whiting—Puget Sound fishery license may be transferred through gift, devise, bequest, or descent to members of the license holder's immediate family which shall be limited to spouse, children, or stepchildren. The holder of a whiting—Puget Sound fishery license shall be present on any vessel taking whiting under the license. In no instance may temporary permits be issued.

The director may adopt rules necessary to implement RCW 75.30.160 through 75.30.180. [1993 c 340 § 40; 1986 c 198 § 4.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.210 Sea urchin dive fishery license—Limitation on issuance—Transfer limitations—Issuance of additional licenses. (1) It is unlawful to commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin dive fishery license.

(2) Except as provided in subsections (3) and (6) of this section, after December 31, 1991, the director shall issue no new sea urchin dive fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) The person shall have held the sea urchin dive fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year; and

(b) The person shall document, by valid shellfish receiving tickets issued by the department, that twenty thousand pounds of sea urchins were caught and sold under the license sought to be renewed during the two-year period ending March 31 of the most recent odd-numbered year.

(3) Where the person failed to obtain the license during the previous year because of a license suspension or revocation by the department or the court, the person may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) The director may reduce or waive the poundage requirement of subsection (2)(b) of this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(5) Sea urchin dive fishery licenses are not transferable from one license holder to another, except from parent to child, or from spouse to spouse during marriage or as a

result of marriage dissolution, or upon the death of the license holder.

(6) If fewer than forty-five persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain up to forty-five licenses in the sea urchin dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050. [1993 c 340 § 41; 1990 c 62 § 2; 1989 c 37 § 2.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative finding—1990 c 62; 1989 c 37: "The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of vessels engaged in commercial sea urchin fishing has steadily increased. This factor, combined with advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins. The legislature desires to maintain the livelihood of those vessel owners who have historically and continuously participated in the sea urchin fishery. The legislature desires that the director have the authority to consider extenuating circumstances concerning failure to meet landing requirements for both initial endorsement issuance and endorsement renewal.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state. The legislature is aware that the continuing license provisions of the administrative procedure act, RCW 34.05.422(3) provide procedural safeguards, but finds that the pressure on the sea urchin resource endangers both the resource and the economic well-being of the sea urchin fishery, and desires, therefore, to exempt sea urchin endorsements from the continuing license provision." [1990 c 62 § 1; 1989 c 37 § 1.]

75.30.220 Emerging commercial fishery designation—Experimental fishery permits. (1) The director may issue experimental fishery permits for commercial harvest in an emerging commercial fishery for which the director has determined there is a need to limit the number of participants. The director shall determine by rule the number and qualifications of participants for such experimental fishery permits. Only a person who holds an emerging commercial fishery license issued under RCW 75.28.740 and who meets the qualifications established in those rules may hold an experimental fishery permit. The director shall limit the number of these permits to prevent habitat damage, ensure conservation of the resource, and prevent overharvesting. In developing rules for limiting participation in an emerging or expanding commercial fishery, the director shall appoint a five-person advisory board representative of the affected fishery industry. The advisory board shall review and make recommendations to the director on rules relating to the number and qualifications of the participants for such experimental fishery permits.

(2) RCW 34.05.422(3) does not apply to applications for new experimental fishery permits.

(3) Experimental fishery permits are not transferable from the permit holder to any other person. [1993 c 340 § 42; 1990 c 63 § 2.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative finding—1990 c 63: "The legislature finds that:

(1) A number of commercial fisheries have emerged or expanded in the past decade;

(2) Scientific information is critical to the proper management of an emerging or expanding commercial fishery; and

(3) The scientific information necessary to manage an emerging or expanding commercial fishery can best be obtained through the use of limited experimental fishery permits allowing harvest levels that will preserve and protect the state's food fish and shellfish resource." [1990 c 63 § 1.]

75.30.230 Emerging commercial fishery designation—Legislative review. Whenever the director promulgates a rule designating an emerging commercial fishery, the legislative standing committees of the house of representatives and senate dealing with fisheries issues shall be notified of the rule and its justification thirty days prior to the effective date of the rule. [1990 c 63 § 3.]

75.30.240 Emerging commercial fishery—License status—Recommendations to legislature. Within five years after adopting rules to govern the number and qualifications of participants in an emerging commercial fishery, the director shall provide to the appropriate senate and house of representatives committees a report which outlines the status of the fishery and a recommendation as to whether a separate commercial fishery license, license fee, or limited harvest program should be established for that fishery. [1993 c 340 § 43; 1990 c 63 § 4.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.250 Sea cucumber dive fishery license—Requirements. (1) It is unlawful to commercially take while using shellfish diver gear any species of sea cucumber without first obtaining a sea cucumber dive fishery license.

(2) Except as provided in subsection (6) of this section, after December 31, 1991, the director shall issue no new sea cucumber dive fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) The person shall have held the sea cucumber dive fishery license sought to be renewed during the previous two years or acquired the license by transfer from someone who held it during the previous year; and

(b) The person shall establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers totaling at least ten thousand pounds were made under the license during the previous two-year period ending December 31 of the odd-numbered year.

(3) Where the person failed to obtain the license during either of the previous two years because of a license suspension by the department or the court, the person may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) The director may reduce or waive any landing or poundage requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of any landing or poundage requirement in individual cases if, in the board's judgment, extenuating

circumstances prevent achievement of the landing or poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(5) Sea cucumber dive fishery licenses are not transferable from one license holder to another except from parent to child, from spouse to spouse during marriage or as a result of marriage dissolution, or upon death of the license holder.

(6) If fewer than fifty persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses from those persons who can demonstrate two years' experience in the Washington state sea cucumber dive fishery. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain up to fifty licenses in the sea cucumber dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea cucumber dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050. [1993 c 340 § 44; 1990 c 61 § 2.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative findings—1990 c 61: "The legislature finds that a significant commercial sea cucumber fishery is developing within state waters. The potential for depletion of the sea cucumber stocks in these waters is increasing, particularly as the sea cucumber fishery becomes an attractive alternative to commercial fishers who face increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishers engaged in commercially harvesting sea cucumbers has rapidly increased. This factor, combined with increases in market demand, has resulted in strong pressures on the supply of sea cucumbers.

The legislature finds that increased regulation of commercial sea cucumber fishing is necessary to preserve and efficiently manage the commercial sea cucumber fishery in the waters of the state.

The legislature finds that it is desirable in the long term to reduce the number of vessels participating in the commercial sea cucumber fishery to fifty vessels to preserve the sea cucumber resource, efficiently manage the commercial sea cucumber fishery in the waters of the state, and reduce conflict with upland owners.

The legislature finds that it is important to preserve the livelihood of those who have historically participated in the commercial sea cucumber fishery that began about 1970 and that the 1988 and 1989 seasons should be used to document historical participation." [1990 c 61 § 1.]

75.30.260 Herring spawn on kelp fishery licenses—Number limited. The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp fishery licenses shall not exceed five annually. The state therefore must use its authority to regulate the number of herring spawn on kelp fishery licenses so that the management and economic health of the herring fishery may

be improved. [1993 c 340 § 36; 1989 c 176 § 1. Formerly RCW 75.28.235.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.270 Herring spawn on kelp fishery license—

Auction. (1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 75.28.120 and 75.30.140; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all holders of herring fishery licenses thirty days' notice of the auction. [1993 c 340 § 37; 1989 c 176 § 2. Formerly RCW 75.28.245.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.280 Geoduck fishery license—Conditions and limitations—OSHA regulations—Violations. (1) It is unlawful to harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 75.24.100. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for

suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The department shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the department shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured. [1993 c 340 § 46.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

75.30.290 Ocean pink shrimp—Delivery license—Requirements and criteria—Continuous participation.

After December 31, 1993, it is unlawful to deliver into any Washington state port ocean pink shrimp caught in offshore waters without an ocean pink shrimp delivery license issued under RCW 75.28.730, or an ocean pink shrimp single delivery license issued under RCW 75.30.320. An ocean pink shrimp delivery license shall be issued to a vessel that:

(1) Landed a total of at least five thousand pounds of ocean pink shrimp in Washington in any single calendar year between January 1, 1983, and December 31, 1992, as documented by a valid shellfish receiving ticket; and

(2) Can show continuous participation in the Washington, Oregon, or California ocean pink shrimp fishery by being eligible to land ocean pink shrimp in either Washington, Oregon, or California each year since the landing made under subsection (1) of this section. Evidence of such eligibility shall be a certified statement from the relevant state licensing agency that the applicant for a Washington ocean pink shrimp delivery license held at least one of the following permits:

(a) For Washington: Possession of a delivery permit or delivery license issued under RCW 75.28.125 or a trawl license (other than Puget Sound) issued under *RCW 75.28.140;

(b) For Oregon: Possession of a vessel permit issued under Oregon Revised Statute 508.880; or

(c) For California: A trawl permit issued under California Fish and Game Code sec. 8842. [1993 c 376 § 5.]

*Reviser's note: RCW 75.28.140 was repealed by 1993 c 340 § 56, effective January 1, 1994.

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

75.30.300 Ocean pink shrimp—Delivery license—Requirements and criteria—Historical participation.

An applicant who can show historical participation under RCW 75.30.290(1) but does not satisfy the continuous participation requirement of RCW 75.30.290(2) shall be issued an ocean pink shrimp delivery license if:

(1) The owner can prove that the owner was in the process on December 31, 1992, of constructing a vessel for the purpose of ocean pink shrimp harvest. For purposes of

this section, "construction" means having the keel laid, and "for the purpose of ocean pink shrimp harvest" means the vessel is designed as a trawl vessel. An ocean pink shrimp delivery license issued to a vessel under construction is not renewable after December 31, 1994, unless the vessel lands a total of at least five thousand pounds of ocean pink shrimp into a Washington state port before December 31, 1994; or

(2) The applicant's vessel is a replacement for a vessel that is otherwise eligible for an ocean pink shrimp delivery license. [1993 c 376 § 6.]

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

75.30.310 Ocean pink shrimp—Delivery license—License transfer—License suspension. After December 31, 1994, an ocean pink shrimp delivery license may only be issued to a vessel that held an ocean pink shrimp delivery license in 1994, and each year thereafter. If the license is transferred to another vessel, the license history shall also be transferred to the transferee vessel.

Where the failure to hold the license in any given year was the result of a license suspension, the vessel may qualify if the vessel held an ocean pink shrimp delivery license in the year immediately preceding the year of the license suspension. [1993 c 376 § 7.]

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

75.30.320 Ocean pink shrimp—Single delivery license. The owner of an ocean pink shrimp fishing vessel that does not qualify for an ocean pink shrimp delivery license issued under RCW 75.28.730 shall obtain an ocean pink shrimp single delivery license in order to make a landing into a state port of ocean pink shrimp taken in offshore waters. The director shall not issue an ocean pink shrimp single delivery license unless, as determined by the director, a bona fide emergency exists. A maximum of six ocean pink shrimp single delivery licenses may be issued annually to any vessel. Unless adjusted by the director pursuant to the director's authority granted in *RCW 75.28.065, the fee for an ocean pink shrimp single delivery license is one hundred dollars. [1993 c 376 § 8.]

*Reviser's note: RCW 75.28.065 was repealed by 1993 sp.s. c 17 § 31, effective January 1, 1994.

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

75.30.330 Ocean pink shrimp—Delivery license—Reduction of landing requirement. The director may reduce the landing requirements established under RCW 75.30.290 upon the recommendation of an advisory review board established under RCW 75.30.050, but the director may not entirely waive the landing requirement. The advisory review board may recommend a reduction of the landing requirement in individual cases if in the board's judgment, extenuating circumstances prevented achievement of the landing requirement. The director shall adopt rules governing the operation of the advisory review board and defining "extenuating circumstances." [1993 c 376 § 10.]

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

75.30.350 Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined. (1) Effective January 1, 1995, it is unlawful to fish for coastal crab in Washington state waters without a Dungeness crab-coastal or a Dungeness crab-coastal class B fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab-coastal fishery license is transferable. Except as provided in subsection (3) of this section, such a license shall only be issued to a person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through 1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

(i) Crab pot—Non-Puget Sound license, issued under RCW 75.28.130(1)(b);

(ii) Nonsalmon delivery license, issued under RCW 75.28.125;

(iii) Salmon troll license, issued under RCW 75.28.110;

(iv) Salmon delivery license, issued under RCW 75.28.113;

(v) Food fish trawl license, issued under RCW 75.28.120; or

(vi) Shrimp trawl license, issued under RCW 75.28.130; or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31, 1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992, if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who

held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with RCW 75.30.050. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(b)(i) The keel was laid before September 15, 1992; and

(ii) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) A Dungeness crab—coastal class B fishery license is not transferable. Such a license shall be issued to persons who do not meet the qualification criteria for a Dungeness crab—coastal fishery license, if the person has designated on a qualifying license after December 31, 1993, a vessel or replacement vessel that, singly or in combination, made a minimum of four landings totaling a minimum of two thousand pounds of coastal crab, documented by valid Washington state shellfish receiving tickets, during at least one of the four qualifying seasons, and if the person has participated continuously in the coastal crab fishery by having held or by having owned a vessel that held one or more of the licenses listed in subsection (2) of this section in each calendar year subsequent to the qualifying season in which qualifying landings were made through 1994. Dungeness crab—coastal class B fishery licenses cease to exist after December 31, 1999, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(5) The four qualifying seasons for purposes of this section are:

(a) December 1, 1988, through September 15, 1989;

(b) December 1, 1989, through September 15, 1990;

(c) December 1, 1990, through September 15, 1991; and

(d) December 1, 1991, through September 15, 1992.

(6) For purposes of this section and RCW 75.30.420, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(7) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab—coastal or Dungeness crab—coastal class B fishery license. A Dungeness crab—

coastal or Dungeness crab—coastal class B fishery license may only be issued to a person who designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995. [1995 c 252 § 1; 1994 c 260 § 2.]

Finding—1994 c 260: "The legislature finds that the commercial crab fishery in coastal and offshore waters is overcapitalized. The legislature further finds that this overcapitalization has led to the economic destabilization of the coastal crab industry, and can cause excessive harvesting pressures on the coastal crab resources of Washington state. In order to provide for the economic well-being of the Washington crab industry and to protect the livelihood of Washington crab fishers who have historically and continuously participated in the coastal crab fishery, the legislature finds that it is in the best interests of the economic well-being of the coastal crab industry to reduce the number of fishers taking crab in coastal waters, to reduce the number of vessels landing crab taken in offshore waters, to limit the number of future licenses, and to limit fleet capacity by limiting vessel size." [1994 c 260 § 1.]

Severability—1994 c 260: "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." [1994 c 260 § 24.]

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: "Sections 1 through 5, 9 through 19, and 21 through 24 of this act shall take effect January 1, 1995." [1994 c 260 § 25.]

75.30.360 Crab taken in offshore waters—Criteria for landing in Washington state—Limitations. (1) The director shall allow the landing into Washington state of crab taken in offshore waters only if:

(a) The crab are legally caught and landed by fishers with a valid Washington state Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license; or

(b) The crab are legally caught and landed by fishers with a valid Oregon or California commercial crab fishing license during the calendar year between the dates of February 15th and September 15th inclusive, if the crab were caught in offshore waters beyond the jurisdiction of Washington state, if the crab were taken with crab gear that consisted of one buoy attached to each crab pot, if each crab pot was fished individually, and if the fisher landing the crab has obtained a valid delivery license; or

(c) The director determines that the landing of offshore Dungeness crab by fishers without a Washington state Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license is in the best interest of the coastal crab processing industry and the director has been requested to allow such landings by at least three Dungeness crab processors, and if the landings are permitted only between the dates of December 1st to February 15th inclusively, if only crab fishers commercially licensed to fish by Oregon or California are permitted to land, if the crab was taken with gear that consisted of one buoy attached to each crab pot, if each crab pot was fished individually, if the fisher landing the crab has obtained a valid delivery license, and if the decision is made on a case-by-case basis for the sole reason of improving the economic stability of the commercial crab fishery.

(2) Nothing in this section allows the commercial fishing of Dungeness crab in waters within three miles of Washington state by fishers who do not possess a valid Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license. Landings of offshore Dungeness crab by fishers without a valid

Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B [fishery] license do not qualify the fisher for such licenses. [1994 c 260 § 3.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.370 Crab taken in offshore waters—Dungeness crab offshore delivery license—Fee. A person commercially fishing for Dungeness crab in offshore waters outside of Washington state jurisdiction shall obtain a Dungeness crab offshore delivery license from the director if the person does not possess a valid Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license and the person wishes to land Dungeness crab into a place or a port in the state. The annual fee for a Dungeness crab offshore delivery license is two hundred fifty dollars. The director may specify restrictions on landings of offshore Dungeness crab in Washington state as authorized in RCW 75.30.360.

Fees from the offshore Dungeness crab delivery license shall be placed in the coastal crab account created in RCW 75.30.390. [1994 c 260 § 4.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.380 Transfer of Dungeness crab-coastal fishery licenses—Fee—Affidavit and survey required. Dungeness crab—coastal fishery licenses are freely transferable on a willing seller-willing buyer basis, if upon each sale of a Dungeness crab—coastal fishery license, twenty percent of the sale proceeds are remitted to the department and deposited in the coastal crab account. Funds shall be used for license purchase as provided in RCW 75.30.400 or for coastal crab management activities as provided in RCW 75.30.410.

For any license transfer that includes the transfer of the designated vessel and associated business, the seller must sign a notarized affidavit that the value of the vessel and associated business was not inflated. A marine survey documenting the value of the vessel and associated business shall be filed with the department along with the affidavit and the application to transfer the Dungeness crab—coastal fishery license. The cost of the survey shall be paid by the purchaser. [1994 c 260 § 5.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.390 Coastal crab account—Surcharge on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses. (1) The coastal crab account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. Funds may be used for license purchase as provided in RCW 75.30.400, or for

coastal crab management activities as provided in RCW 75.30.410. The appropriate standing committees of the legislature shall review the status and expenditures of the coastal crab account yearly.

(2) A surcharge of two hundred fifty dollars shall be collected with each Dungeness crab—coastal fishery license and Dungeness crab—coastal class B fishery license for 1995 and 1996, for the purposes of purchasing Dungeness crab—coastal class B fishery licenses as provided in RCW 75.30.400. The moneys shall be deposited into the coastal crab account. [1994 c 260 § 6.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

75.30.400 Coastal crab account expenditures—Purchase of Dungeness crab-coastal class B fishery licenses. Expenditures from the coastal crab account may be made by the department to purchase Dungeness crab—coastal class B fishery licenses during the following time periods:

(1) January 1, 1995, to December 31, 1995, at a price not to exceed five thousand dollars per license; or

(2) January 1, 1996, to December 31, 1996, at a price not to exceed three thousand five hundred dollars per license.

The department shall establish rules governing the purchase of class B licenses. Dungeness crab—coastal class B fishery licensees may apply to the department for the purposes of selling their license on a willing seller basis. Licenses will be purchased in the order applications are received, or as funds allow. [1994 c 260 § 7.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

75.30.410 Coastal crab account expenditures—Management of coastal crab resource. (*Effective January 1, 1997.*) Expenditures from the coastal crab account may be made by the department for management of the coastal crab resource. Management activities may include studies of resource viability, interstate negotiations concerning regulation of the offshore crab resource, resource enhancement projects, or other activities as determined by the department. [1994 c 260 § 8.]

Effective date—1994 c 260 § 8: "Section 8 of this act shall take effect January 1, 1997." [1994 c 260 § 26.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

75.30.420 Criteria for nonresident Dungeness crab-coastal fishery license for Oregon residents—Section effective contingent upon reciprocal statutory authority in Oregon. (1) An Oregon resident who can show historical and continuous participation in the Washington state coastal crab fishery by having held a nonresident non-Puget Sound crab pot license issued under RCW 75.28.130 each year from 1990 through 1994, and who has delivered a minimum of eight landings totaling five thousand pounds of crab into Oregon during any two of the four qualifying seasons as provided in *RCW 75.30.350(4) as evidenced by valid Oregon fish receiving tickets, shall be issued a nonresident Dungeness crab—coastal fishery license valid for fishing in Washington state waters north from the Oregon-Washington

boundary to United States latitude forty-six degrees thirty minutes north. Such license shall be issued upon application and submission of proof of delivery.

(2) This section shall become effective contingent upon reciprocal statutory authority in the state of Oregon providing for equal access for Washington state coastal crab fishers to Oregon territorial coastal waters north of United States latitude forty-five degrees fifty-eight minutes north, and Oregon waters of the Columbia river. [1994 c 260 § 9.]

*Reviser's note: RCW 75.30.350 was amended by 1995 c 252 § 1, changing subsection (4) to subsection (5).

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.430 Restrictions on designations and substitutions on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses. (1) The following restrictions apply to vessel designations and substitutions on Dungeness crab—coastal fishery licenses and Dungeness crab—coastal class B fishery licenses:

(a) The holder of the license may not designate on the license a vessel the hull length of which exceeds ninety-nine feet, nor may the holder change vessel designation if the hull length of the vessel proposed to be designated exceeds the hull length of the currently designated vessel by more than ten feet;

(b) If the hull length of the vessel proposed to be designated is comparable to or exceeds by up to one foot the hull length of the currently designated vessel, the department may change the vessel designation no more than once in any two consecutive Washington state coastal crab seasons unless the currently designated vessel is lost or in disrepair such that it does not safely operate, in which case the department may allow a change in vessel designation;

(c) If the hull length of the vessel proposed to be designated exceeds by between one and ten feet the hull length of the currently designated vessel, the department may change the vessel designation no more than once in any five consecutive Washington state coastal crab seasons, unless a request is made by the license holder during a Washington state coastal crab season for an emergency change in vessel designation. If such an emergency request is made, the director may allow a temporary change in designation to another vessel, if the hull length of the other vessel does not exceed by more than ten feet the hull length of the currently designated vessel.

(2) For the purposes of this section, "hull length" means the length of a vessel's hull as shown by United States coast guard documentation or marine survey, or for vessels that do not require United States coast guard documentation, by manufacturer's specifications or marine survey. [1994 c 260 § 10.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.440 Dungeness crab-coastal fishery licenses—Limitation on new licenses—Requirements for renewal. Except as provided under RCW 75.30.460, the director shall

issue no new Dungeness crab—coastal fishery licenses after December 31, 1995. A person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person. Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended. [1994 c 260 § 13.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.450 Limitation on taking crab in the exclusive economic zone of Oregon or California—Section effective contingent upon reciprocal legislation by both Oregon and California. (1) It is unlawful for Dungeness crab—coastal fishery licensees to take Dungeness crab in the waters of the exclusive economic zone westward of the states of Oregon or California and land crab taken in those waters into Washington state unless the licensee also holds the licenses, permits, or endorsements, required by Oregon or California to land crab into Oregon or California, respectively.

(2) This section becomes effective only upon reciprocal legislation being enacted by both the states of Oregon and California. For purposes of this section, "exclusive economic zone" means that zone defined in the federal fishery conservation and management act (16 U.S.C. Sec. 1802) as of January 1, 1995, or as of a subsequent date adopted by rule of the director. [1994 c 260 § 16.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.460 Dungeness crab-coastal fishery licenses—Criteria for issuing new licenses. If fewer than one hundred seventy-five persons are eligible for Dungeness crab—coastal fishery licenses, the director may accept applications for new licenses. Additional licenses issued may maintain a maximum of one hundred seventy-five licenses in the Washington coastal crab fishery. If additional licenses are to be issued, the director shall adopt rules governing the notification, application, selection, and issuance procedures for new Dungeness crab—coastal fishery licenses, based on recommendations of the review board established under RCW 75.30.050. [1994 c 260 § 17.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.470 Reduction of landing requirements under RCW 75.30.350—Procedure. The director may reduce the landing requirements established under RCW 75.30.350 upon the recommendation of an advisory review board established under RCW 75.30.050, but the director may not entirely

waive the landing requirement. The advisory review board may recommend a reduction of the landing requirement in individual cases if in the board's judgment, extenuating circumstances prevented achievement of the landing requirement. The director shall adopt rules governing the operation of the advisory review board and defining "extenuating circumstances." Extenuating circumstances may include situations in which a person had a vessel under construction such that qualifying landings could not be made. In defining extenuating circumstances, special consideration shall be given to individuals who can provide evidence of lack of access to capital based on past discrimination due to race, creed, color, sex, national origin, or disability. [1994 c 260 § 19.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

75.30.480 Coastal Dungeness crab resource plan.

The department, with input from Dungeness crab—coastal fishery licensees and processors, shall prepare a resource plan to achieve even-flow harvesting and long-term stability of the coastal Dungeness crab resource. The plan may include pot limits, further reduction in the number of vessels, individual quotas, trip limits, area quotas, or other measures as determined by the department. The plan shall be submitted to the appropriate standing committees of the legislature by December 1, 1995. [1994 c 260 § 20.]

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Chapter 75.40 COMPACTS

Sections

- 75.40.010 Columbia River Compact—Provisions.
- 75.40.020 Columbia River Compact—Commission to represent state.
- 75.40.030 Pacific Marine Fisheries Compact—Provisions.
- 75.40.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission.
- 75.40.060 Treaty between United States and Canada concerning Pacific salmon.
- 75.40.100 Coastal ecosystems compact authorized.
- 75.40.110 Coastal ecosystems cooperative agreements authorized.

Authority of commission to adopt rules of fisheries commissions and compacts: RCW 75.08.070.

75.40.010 Columbia River Compact—Provisions.

There exists between the states of Washington and Oregon a definite compact and agreement as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia river, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [1983 1st ex.s. c 46 § 149; 1955 c 12 § 75.40.010. Prior: 1949 c 112 § 80; Rem. Supp. 1949 § 5780-701.]

75.40.020 Columbia River Compact—Commission to represent state. The commission may give to the state of Oregon such consent and approbation of the state of Washington as is necessary under the compact set out in RCW 75.40.010. For the purposes of RCW 75.40.010, the states of Washington and Oregon have concurrent jurisdiction in the concurrent waters of the Columbia river as defined in RCW 75.08.011. [1995 1st sp.s. c 2 § 19 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 150; 1955 c 12 § 75.40.020. Prior: 1949 c 112 § 81; Rem. Supp. 1949 § 5780-702.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.40.030 Pacific Marine Fisheries Compact—Provisions. There exists between the states of Alaska, California, Idaho, Oregon and Washington a definite compact and agreement as follows:

THE PACIFIC MARINE FISHERIES COMPACT

The contracting states do hereby agree as follows:

ARTICLE I.

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

ARTICLE II.

This agreement shall become operative immediately as to those states executing it whenever the compacting states have executed it in the form that is in accordance with the laws of the executing states and the congress has given its consent.

ARTICLE III.

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as The Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be a body with the powers and duties set forth herein.

The term of each commissioner of The Pacific Marine Fisheries Commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by

the statutes of the state concerned. Each commissioner may delegate in writing from time to time to a deputy the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV.

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V.

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure, remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its

business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI.

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

ARTICLE VII.

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of The Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII.

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX.

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

ARTICLE X.

The states agree to make available annual funds for the support of the commission on the following basis:

Eighty percent of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean; not less than five percent of the annual budget shall be contributed by any other member state; the balance of the annual budget shall be shared by those member states, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member state shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon, and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10 of the Constitution of the United States.

ARTICLE XI.

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII.

The states of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of The Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

This article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States. [1983 1st ex.s. c 46 § 151; 1969 ex.s. c 101 § 2; 1959 ex.s. c 7 § 1; 1955 c 12 § 75.40.030. Prior: 1949 c 112 § 82(1); Rem. Supp. 1949 § 5780-703(1).]

Reviser's note: The 24th annual report (1971 p 40) of the Pacific Marine Fisheries Compact commission indicates congressional approval effective July 10, 1970, by P.L. 91-315, 91st congress; 84 Stat. 415.

Effective date—1969 ex.s. c 101: "The provisions of this 1969 amendatory act shall not take effect until such time as the proposed amendment to The Pacific Marine Fisheries Compact contained herein is approved by the congress of the United States." [1969 ex.s. c 101 § 1.] This applies to RCW 75.40.030.

75.40.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission. A member selected by or a designee of the fish and wildlife commission, ex officio, and two appointees of the governor representing the fishing industry shall act as the representatives of this state on the Pacific Marine Fisheries Commission. The appointees of the governor are subject to confirmation by the state senate. [1995 1st sp.s. c 2 § 20 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 152; 1963 c 171 § 2; 1955 c 12 § 75.40.040. Prior: 1949 c 112 § 82(2); Rem. Supp. 1949 § 5780-703(2).]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.40.060 Treaty between United States and Canada concerning Pacific salmon. The commission may adopt and enforce the provisions of the treaty between the government of the United States and the government of Canada concerning Pacific salmon, treaty document number 99-2, entered into force March 18, 1985, at Quebec City, Canada, and the regulations of the commission adopted under authority of the treaty. [1995 1st sp.s. c 2 § 21 (Referendum Bill No. 45, approved November 7, 1995); 1989 c 130 § 2; 1983 1st ex.s. c 46 § 153; 1955 c 12 § 75.40.060. Prior: 1949 c 112 § 83; Rem. Supp. 1949 § 5780-704.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.40.100 Coastal ecosystems compact authorized.

The state of Washington is authorized to enter into an interstate compact or compacts with all or any of the states of California, Idaho, and Oregon to protect and restore coastal ecosystems of these states to levels that will prevent the need for listing any native salmonid fish species under the federal endangered species act of 1973, as amended, or under any comparable state legislation. [1994 c 148 § 1.]

Effective date—1994 c 148: "This act shall take effect July 1, 1994." [1994 c 148 § 3.]

75.40.110 Coastal ecosystems cooperative agreements authorized. Until such time as the agencies in California, Idaho, Oregon, and Washington present a final proposed interstate compact for enactment by their respective legislative bodies, the governor may establish cooperative agreements with the states of California, Idaho, and Oregon that allow the states to coordinate their individual efforts in developing state programs that further the region-wide goals set forth under RCW 75.40.100. [1994 c 148 § 2.]

Effective date—1994 c 148: See note following RCW 75.40.100.

Chapter 75.44

PROGRAM TO PURCHASE FISHING VESSELS AND LICENSES

Sections

- 75.44.100 Definitions.
- 75.44.110 Program authorized—Conditions.
- 75.44.120 Determination of purchase price—Maximum price.
- 75.44.130 Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes.
- 75.44.140 Rules—Administration of program.
- 75.44.150 Vessel, gear, license, and permit reduction fund.

75.44.100 Definitions. As used in this chapter:

(1) "Case areas" means those areas of the Western district of Washington and in the adjacent offshore waters which are within the jurisdiction of the state of Washington, as defined in *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and in *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976), or an area in which fishing rights are affected by court decision in a manner consistent with the above-mentioned decisions;

(2) "Program" means the program established under RCW 75.44.100 through 75.44.150. [1985 c 7 § 150; 1983 1st ex.s. c 46 § 155; 1977 ex.s. c 230 § 3; 1975 1st ex.s. c 183 § 3. Formerly RCW 75.28.505.]

Legislative finding and intent—1975 1st ex.s. c 183: "The legislature finds that the protection, welfare, and economic well-being of the commercial fishing industry is important to the people of this state. There presently exists an overabundance of commercial fishing gear in our state waters which causes great pressure on the fishing resources. This results in great economic waste to the state and prohibits conservation and harvesting programs from achieving their goals. This adverse situation has been compounded by the federal court decisions, *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976). As a result, large numbers of commercial fishermen face personal economic hardship, and the state

commercial fishing industry is confronted with economic difficulty. The public welfare requires that the state have the authority to purchase commercial fishing vessels, licenses, gear, and permits offered for sale, as appropriate, in a manner which will provide relief to the individual vessel owner, and which will effect a reduction in the amount of commercial fishing gear in use in the state so as to insure increased economic opportunity for those persons in the industry and to insure that sound scientific conservation and harvesting programs can be carried out. It is the intention of the legislature to provide relief to commercial fishermen adversely affected by the current economic situation in the state fishery and to preserve this valuable state industry and these natural resources." [1977 ex.s. c 230 § 2; 1975 1st ex.s. c 183 § 2. Formerly RCW 75.28.500.]

75.44.110 Program authorized—Conditions. The department may purchase commercial fishing vessels and appurtenant gear, and the current state commercial fishing licenses, delivery permits, and charter boat licenses if the license or permit holder was substantially restricted in fishing as a result of compliance with *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976).

The department shall not purchase a vessel without also purchasing all current Washington commercial fishing licenses and delivery permits and charter boat licenses issued to the vessel or its owner. The department may purchase current licenses and delivery permits without purchasing the vessel. [1984 c 67 § 1; 1983 1st ex.s. c 46 § 156; 1979 ex.s. c 43 § 1; 1977 ex.s. c 230 § 4; 1975 1st ex.s. c 183 § 4. Formerly RCW 75.28.510.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.120 Determination of purchase price—Maximum price. The purchase price of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately.

The director may specify a maximum price to be paid for a vessel, gear, license, or delivery permit purchased under RCW 75.44.110. A license or delivery permit purchased under RCW 75.44.110 shall be permanently retired by the department. [1983 1st ex.s. c 46 § 157; 1975 1st ex.s. c 183 § 5. Formerly RCW 75.28.515.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.130 Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes. The department may arrange for the insurance, storage, and resale or other disposition of vessels and gear purchased under RCW 75.44.110. Vessels shall not be resold by the department to the seller or the seller's immediate family. The vessels shall not be used by any owner or operator: (1) As a commercial fishing or charter vessel in state waters; or (2) to deliver fish to a place or port in the state. The department shall require that the purchasers and other users of vessels sold by the department execute suitable instruments to insure compliance with the requirements of this section. The director may commence suit or be sued on such an instrument in a state court of record

or United States district court having jurisdiction. [1983 1st ex.s. c 46 § 158; 1979 ex.s. c 43 § 2; 1975 1st ex.s. c 183 § 6. Formerly RCW 75.28.520.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.140 Rules—Administration of program. The director shall adopt rules for the administration of the program. To assist the department in the administration of the program, the director may contract with persons not employed by the state and may enlist the aid of other state agencies. [1995 c 269 § 3201; 1983 1st ex.s. c 46 § 159; 1979 ex.s. c 43 § 4; 1975-'76 2nd ex.s. c 34 § 172; 1975 1st ex.s. c 183 § 8. Formerly RCW 75.28.530.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.150 Vessel, gear, license, and permit reduction fund. The director is responsible for the administration and disbursement of all funds, goods, commodities, and services received by the state under the program.

There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund". This fund shall be used for purchases under RCW 75.44.110 and for the administration of the program. This fund shall be credited with federal or other funds received to carry out the purposes of the program and the proceeds from the sale or other disposition of property purchased under RCW 75.44.110. [1983 1st ex.s. c 46 § 160; 1977 ex.s. c 230 § 5; 1975 1st ex.s. c 183 § 9. Formerly RCW 75.28.535.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

Chapter 75.48

SALMON ENHANCEMENT FACILITIES—BOND ISSUE

Sections

75.48.020	General obligation bonds authorized—Purpose—Terms—Appropriation required.
75.48.040	Administration of proceeds.
75.48.050	"Facilities" defined.
75.48.060	Form, terms, conditions, etc., of bonds.
75.48.070	Anticipation notes—Authorized—Payment of principal and interest on bonds and notes.
75.48.080	Salmon enhancement construction bond retirement fund—Created—Purpose.
75.48.100	Availability of sufficient revenue required before bonds issued.
75.48.110	Bonds legal investment for public funds.

75.48.020 General obligation bonds authorized—Purpose—Terms—Appropriation required. For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the

state finance committee may issue general obligation bonds of the state of Washington in the sum of twenty-nine million two hundred thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1990 1st ex.s. c 15 § 10. Prior: 1989 1st ex.s. c 14 § 15; 1989 c 136 § 8; 1985 ex.s. c 4 § 10; 1983 1st ex.s. c 46 § 162; 1981 c 261 § 1; 1980 c 15 § 1; 1977 ex.s. c 308 § 2.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Intent—1989 c 136: See note following RCW 43.83A.020.

Severability—1985 ex.s. c 4: See RCW 43.99G.900.

Legislative finding—1977 ex.s. c 308: "The long range economic development goals for the state of Washington must include the restoration of salmon runs to provide an increased supply of this renewable resource for the benefit of commercial and recreational users and the economic well-being of the state." [1977 ex.s. c 308 § 1. Formerly RCW 75.48.010.]

75.48.040 Administration of proceeds. The proceeds from the sale of the bonds deposited in the salmon enhancement construction account of the general fund under the terms of this chapter shall be administered by the department subject to legislative appropriation. [1983 1st ex.s. c 46 § 164; 1977 ex.s. c 308 § 4.]

75.48.050 "Facilities" defined. As used in this chapter, "facilities" means salmon propagation facilities including, but not limited to, all equipment, utilities, structures, real property, and interests in and improvements on real property, as well as stream bed clearing, for or incidental to the acquisition, construction, or development of salmon propagation facilities. Specifically, the term includes a spawning channel on the Skagit river. [1983 1st ex.s. c 46 § 165; 1981 c 261 § 2; 1977 ex.s. c 308 § 5.]

75.48.060 Form, terms, conditions, etc., of bonds. The state finance committee may prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. [1989 c 136 § 9; 1983 1st ex.s. c 46 § 166; 1977 ex.s. c 308 § 6.]

Intent—1989 c 136: See note following RCW 43.83A.020.

75.48.070 Anticipation notes—Authorized—Payment of principal and interest on bonds and notes. When the state finance committee has decided to issue the bonds or a portion thereof, it may, pending the issuing of the bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The portion of the proceeds of the sale of the bonds as may be required for the purpose shall be applied to the payment of the principal of and interest on the anticipation notes which have been issued. The bonds and notes shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. The state finance commit-

[Title 75 RCW—page 56]

tee may authorize the use of a printed facsimile of the seal of the state of Washington in the issuance of the bonds and notes. [1983 1st ex.s. c 46 § 167; 1977 ex.s. c 308 § 7.]

75.48.080 Salmon enhancement construction bond retirement fund—Created—Purpose. The salmon enhancement construction bond retirement fund is created in the state treasury. This 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 required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which the interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the salmon enhancement construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on such payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed herein. [1983 1st ex.s. c 46 § 168; 1977 ex.s. c 308 § 8.]

75.48.100 Availability of sufficient revenue required before bonds issued. The bonds authorized by this chapter shall be issued only after the director has certified, based upon reasonable estimates and data provided to the department, that sufficient revenues will be available from sport and commercial salmon license sales and from salmon fees and taxes to meet the requirements of RCW 75.48.080 during the life of the bonds. [1983 1st ex.s. c 46 § 170; 1977 ex.s. c 308 § 10.]

75.48.110 Bonds legal investment for public funds. The bonds authorized in this chapter are a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1983 1st ex.s. c 46 § 171; 1977 ex.s. c 308 § 11.]

Chapter 75.50

SALMON ENHANCEMENT PROGRAM

Sections

75.50.010	Legislative findings.
75.50.020	Long-term regional policy statements.
75.50.030	Salmon enhancement plan—Enhancement projects.
75.50.040	Commission to monitor enhancement projects and enhancement plan.
75.50.050	Annual report to legislature.
75.50.060	"Enhancement project" defined.
75.50.070	Regional fisheries enhancement group authorized.
75.50.080	Regional fisheries enhancement group—Goals.
75.50.090	Regional fisheries enhancement groups—Incorporation prerequisites.
75.50.100	Regional fisheries enhancement group account—Revenue sources, uses, and limitations.
75.50.110	Regional fisheries enhancement group advisory board.
75.50.115	Regional fisheries enhancement group advisory board—Duties and authority.
75.50.120	Enhancement efforts—Biennial report.

- 75.50.130 Skagit river salmon recovery plan.
- 75.50.150 Coordination with regional enhancement groups—Findings.
- 75.50.160 Impediments to anadromous fish passage—Identification and removal—Report to legislature.
- 75.50.170 Fish passage barrier removal program.
- 75.50.180 Field testing of remote site incubators.
- 75.50.900 Severability—1985 c 458.

75.50.010 Legislative findings. Currently, many of the salmon stocks of Washington state are critically reduced from their sustainable level. The best interests of all fishing groups and the citizens as a whole are served by a stable and productive salmon resource. Immediate action is needed to reverse the severe decline of the resource and to insure its very survival. The legislature finds a state of emergency exists and that immediate action is required to restore its fishery.

Disagreement and strife have dominated the salmon fisheries for many years. Conflicts among the various fishing interests have only served to erode the resource. It is time for the state of Washington to make a major commitment to increasing productivity of the resource and to move forward with an effective rehabilitation and enhancement program. The commission is directed to dedicate its efforts and the efforts of the department to seek resolution to the many conflicts that involve the resource.

Success of the enhancement program can only occur if projects efficiently produce salmon or restore habitat. The expectation of the program is to optimize the efficient use of funding on projects that will increase artificially and naturally produced salmon, restore and improve habitat, or identify ways to increase the survival of salmon. The full utilization of state resources and cooperative efforts with interested groups are essential to the success of the program. [1995 1st sp.s. c 2 § 33 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 45; 1985 c 458 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.50.020 Long-term regional policy statements. (1) The commission shall develop long-term regional policy statements regarding the salmon fishery resources before December 1, 1985. The commission shall consider the following in formulating and updating regional policy statements:

- (a) Existing resource needs;
- (b) Potential for creation of new resources;
- (c) Successful existing programs, both within and outside the state;
- (d) Balanced utilization of natural and hatchery production;
- (e) Desires of the fishing interest;
- (f) Need for additional data or research;
- (g) Federal court orders; and
- (h) Salmon advisory council recommendations.

(2) The commission shall review and update each policy statement at least once each year. [1995 1st sp.s. c 2 § 34

(Referendum Bill No. 45, approved November 7, 1995); 1985 c 458 § 2.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.030 Salmon enhancement plan—Enhancement projects. (1) The commission shall develop a detailed salmon enhancement plan with proposed enhancement projects. The plan and the regional policy statements shall be submitted to the secretary of the senate and chief clerk of the house of representatives for legislative distribution by June 30, 1986. The enhancement plan and regional policy statements shall be provided by June 30, 1986, to the natural resources committees of the house of representatives and the senate. The commission shall provide a maximum opportunity for the public to participate in the development of the salmon enhancement plan. To insure full participation by all interested parties, the commission shall solicit and consider enhancement project proposals from Indian tribes, sports fishermen, commercial fishermen, private aquaculturists, and other interested groups or individuals for potential inclusion in the salmon enhancement plan. Joint or cooperative enhancement projects shall be considered for funding.

(2) The following criteria shall be used by the commission in formulating the project proposals:

- (a) Compatibility with the long-term policy statement;
- (b) Benefit/cost analysis;
- (c) Needs of all fishing interests;
- (d) Compatibility with regional plans, including harvest management plans;
- (e) Likely increase in resource productivity;
- (f) Direct applicability of any research;
- (g) Salmon advisory council recommendations;
- (h) Compatibility with federal court orders;
- (i) Coordination with the salmon and steelhead advisory commission program;
- (j) Economic impact to the state;
- (k) Technical feasibility; and
- (l) Preservation of native salmon runs.

(3) The commission shall not approve projects that serve as replacement funding for projects that exist prior to May 21, 1985, unless no other sources of funds are available.

(4) The commission shall prioritize various projects and establish a recommended implementation time schedule. [1995 1st sp.s. c 2 § 35 (Referendum Bill No. 45, approved November 7, 1995); 1985 c 458 § 3.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.040 Commission to monitor enhancement projects and enhancement plan. Upon approval by the legislature of funds for its implementation, the commission shall monitor the progress of projects detailed in the salmon enhancement plan.

The commission shall be responsible for establishing criteria which shall be used to measure the success of each project in the salmon enhancement plan. [1995 1st sp.s. c 2

§ 36 (Referendum Bill No. 45; approved November 7, 1995); 1985 c 458 § 4.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.050 Annual report to legislature. The commission shall report to the legislature on or before October 30th of each year on the progress and performance of each project. The report shall contain an analysis of the successes and failures of the program to enable optimum development of the program. The report shall include estimates of funding levels necessary to operate the projects in future years.

The commission shall submit the reports and any additional recommendations to the chairs of the committees on ways and means and the committees on natural resources of the senate and house of representatives. [1995 1st sp.s. c 2 § 37 (Referendum Bill No. 45, approved November 7, 1995); 1987 c 505 § 72; 1985 c 458 § 5.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.060 "Enhancement project" defined. As used in this chapter, "enhancement project" means salmon propagation activities including, but not limited to, hatcheries, spawning channels, rearing ponds, egg boxes, fishways, fish screens, stream bed clearing, erosion control, habitat restoration, net pens, applied research projects, and any equipment, real property, or other interest necessary to the proper operation thereof. [1985 c 458 § 6.]

75.50.070 Regional fisheries enhancement group authorized. The legislature finds that it is in the best interest of the salmon resource of the state to encourage the development of regional fisheries enhancement groups. The accomplishments of one existing group, the Grays Harbor fisheries enhancement task force, have been widely recognized as being exemplary. The legislature recognizes the potential benefits to the state that would occur if each region of the state had a similar group of dedicated citizens working to enhance the salmon resource.

The legislature authorizes the formation of regional fisheries enhancement groups. These groups shall be eligible for state financial support and shall be actively supported by the commission and the department. The regional groups shall be operated on a strictly nonprofit basis, and shall seek to maximize the efforts of volunteer and private donations to improve the salmon resource for all citizens of the state. [1995 1st sp.s. c 2 § 38 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 46; 1989 c 426 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1989 c 426: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 426 § 10.]

75.50.080 Regional fisheries enhancement group—Goals. Regional fisheries enhancement groups, consistent with the long-term regional policy statements developed under RCW 75.50.020, shall seek to:

- (1) Enhance the salmon resource of the state;
- (2) Maximize volunteer efforts and private donations to improve the salmon resource for all citizens;
- (3) Assist the department in achieving the goal to double the state-wide salmon catch by the year 2000 under chapter 214, Laws of 1988; and
- (4) Develop projects designed to supplement the fishery enhancement capability of the department. [1993 sp.s. c 2 § 47; 1989 c 426 § 4.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1989 c 426: See note following RCW 75.50.070.

75.50.090 Regional fisheries enhancement groups—Incorporation prerequisites. Each regional fisheries enhancement group shall be incorporated pursuant to Title 24 RCW. Any interested person or group shall be permitted to join. It is desirable for the group to have representation from all categories of fishers and other parties that have interest in salmon within the region, as well as the general public. [1990 c 58 § 2.]

Findings—1990 c 58: "The legislature finds that: (1) It is in the best interest of the state to encourage nonprofit regional fisheries enhancement groups authorized in RCW 75.50.070 to participate in enhancing the state's salmon population including, but not limited to, salmon research, increased natural and artificial production, and through habitat improvement; (2) such regional fisheries enhancement groups interested in improving salmon habitat and rearing salmon shall be eligible for financial assistance; (3) such regional fisheries enhancement groups should seek to maximize the efforts of volunteer personnel and private donations; (4) this program will assist the state in its goal to double the salmon catch by the year 2000; (5) this program will benefit both commercial and recreational fisheries and improve cooperative efforts to increase salmon production through a coordinated approach with similar programs in other states and Canada; and (6) the Grays Harbor fisheries enhancement task force's exemplary performance in salmon enhancement provides a model for establishing regional fisheries enhancement groups by rule adopted under RCW 75.50.070, 75.50.080, and 75.50.090 through 75.50.110." [1990 c 58 § 1.]

75.50.100 Regional fisheries enhancement group account—Revenue sources, uses, and limitations. The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A surcharge of one dollar shall be collected on each recreational personal use food fish license sold in the state. A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and

commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [1995 1st sp.s. c 2 § 39 (Referendum Bill No. 45, approved November 7, 1995). Prior: 1993 sp.s. c 17 § 11; 1993 c 340 § 53; 1990 c 58 § 3.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—1990 c 58 § 3: "Section 3 of this act shall take effect January 1, 1991." [1990 c 58 § 6.]

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.110 Regional fisheries enhancement group advisory board. (1) A regional fisheries enhancement group advisory board is established to make recommendations to the commission. The members shall be appointed by the commission and consist of two commercial fishing representatives, two recreational fishing representatives, and three at-large positions. At least two of the advisory board members shall be members of a regional fisheries enhancement group. Advisory board members shall serve three-year terms. The advisory board membership shall include two members serving ex officio to be nominated, one through the Northwest Indian fisheries commission, and one through the Columbia river intertribal fish commission. The chair of the regional fisheries enhancement group advisory board shall be elected annually by members of the regional fisheries enhancement [group] advisory board. The advisory board shall meet at least quarterly. All meetings of the advisory board shall be open to the public under the open public meetings act, chapter 42.30 RCW.

The department shall invite the advisory board to comment and provide input into all relevant policy initiatives, including, but not limited to, wild stock, hatcheries, and habitat restoration efforts.

(2) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The department may use account funds to provide agency assistance to the groups, to provide professional,

administrative or clerical services to the advisory board, or to implement the training and technical [assistance] services plan as developed by the advisory board pursuant to RCW 75.50.115. The level of account funds used by the department shall be determined by the commission after review of recommendation by the regional fisheries enhancement group advisory board and shall not exceed twenty percent of annual contributions to the account. [1995 1st sp.s. c 2 § 40 (Referendum Bill No. 45, approved November 7, 1995); 1995 c 367 § 5; 1990 c 58 § 4.]

Reviser's note: This section was amended by 1995 c 367 § 5 and by 1995 1st sp.s. c 2 § 40 (Referendum Bill No. 45, approved November 7, 1995), 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).

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.115 Regional fisheries enhancement group advisory board—Duties and authority. (1) The regional fisheries enhancement group advisory board shall:

(a) Assess the training and technical assistance needs of the regional fisheries enhancement groups;

(b) Develop a training and technical assistance services plan in order to provide timely, topical technical assistance and training services to regional fisheries enhancement groups. The plan shall be provided to the director and to the senate and house of representatives natural resources committees no later than October 1, 1995, and shall be updated not less than every year. The advisory board shall provide ample opportunity for the public and interested parties to participate in the development of the plan. The plan shall include but is not limited to:

(i) Establishment of an information clearinghouse service that is readily available to regional fisheries enhancement groups. The information clearinghouse shall collect, collate, and make available a broad range of information on subjects that affect the development, implementation, and operation of diverse fisheries and habitat enhancement projects. The information clearinghouse service may include periodical news and informational bulletins;

(ii) An ongoing program in order to provide direct, on-site technical assistance and services to regional fisheries enhancement groups. The advisory board shall assist regional fisheries enhancement groups in soliciting federal, state, and local agencies, tribal governments, institutions of higher education, and private business for the purpose of providing technical assistance and services to regional fisheries enhancement group projects; and

(iii) A cost estimate for implementing the plan;

(c) Propose a budget to the director for operation of the advisory board and implementation of the technical assistance plan;

(d) Make recommendations to the director regarding regional enhancement group project proposals and funding of those proposals; and

(e) Establish criteria for the redistribution of unspent project funds for any regional enhancement group that has a year ending balance exceeding one hundred thousand dollars.

(2) The regional fisheries enhancement group advisory board may:

(a) Facilitate resolution of disputes between regional fisheries enhancement groups and the department;

(b) Promote community and governmental partnerships that enhance the salmon resource and habitat;

(c) Promote environmental ethics and watershed stewardship;

(d) Advocate for watershed management and restoration;

(e) Coordinate regional fisheries enhancement group workshops and training;

(f) Monitor and evaluate regional fisheries enhancement projects;

(g) Provide guidance to regional fisheries enhancement groups; and

(h) Develop recommendations to the director to address identified impediments to the success of regional fisheries enhancement groups. [1995 c 367 § 6.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.120 Enhancement efforts—Biennial report.

The department and the regional fisheries enhancement group advisory board shall report biennially to the senate and the house of representatives natural resources committees, the senate ways and means committee and house of representatives fiscal committees, or any successor committees beginning October 1, 1991. The report shall include but not be limited to the following:

(1) An evaluation of enhancement efforts;

(2) A description of projects;

(3) A region by region accounting of financial contributions and expenditures including the enhancement group account funds;

(4) Volunteer participation and member affiliation, including an inventory of volunteer hours dedicated to the program;

(5) An evaluation of technical assistance training efforts and agency participation;

(6) Identification of impediments to regional fisheries enhancement group success; and

(7) Suggestions for legislative action that would further the enhancement of salmonid resources. [1995 c 367 § 7; 1990 c 58 § 5.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.130 Skagit river salmon recovery plan.

The commission shall prepare a salmon recovery plan for the Skagit river. The plan shall include strategies for employing displaced timber workers to conduct salmon restoration and other tasks identified in the plan. The plan shall incorporate the best available technology in order to achieve maximum restoration of depressed salmon stocks. The plan must encourage the restoration of natural spawning areas and natural rearing of salmon but must not preclude the development of an active hatchery program. [1995 1st sp.s. c 2

§ 41 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 48; 1992 c 88 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.50.150 Coordination with regional enhancement groups—Findings.

The legislature finds that:

(1) Regional enhancement groups are a valuable resource for anadromous fish recovery. They improve critical fish habitat and directly contribute to anadromous fish populations through fish restoration technology.

(2) Due to a decrease in recreational and commercial salmon license sales, regional enhancement groups are receiving fewer financial resources at a time when recovery efforts are needed most.

(3) To maintain regional enhancement groups as an effective enhancement resource, technical assets of state agencies must be coordinated and utilized to maximize the financial resources of regional enhancement groups and overall fish recovery efforts. [1995 c 367 § 1.]

Severability—1995 c 367: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 367 § 12.]

Effective date—1995 c 367: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 367 § 13.]

75.50.160 Impediments to anadromous fish passage—Identification and removal—Report to legislature.

The department's habitat division shall work with cities, counties, and regional fisheries enhancement groups to develop a program to identify and expedite the removal of human-made or caused impediments to anadromous fish passage. A priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. The department may contract with cities and counties to assist in the identification and removal of impediments to anadromous fish passage.

A report on the progress of impediment identification and removal and the need for any additional legislative action shall be submitted to the senate and the house of representatives natural resources committees no later than January 1, 1996. [1995 c 367 § 2.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.170 Fish passage barrier removal program.

To maximize available state resources, the department and the department of transportation shall work in partnership with the regional fisheries enhancement group advisory board to identify cooperative projects to eliminate fish passage barriers caused by state roads and highways. The advisory board may provide input to the department to aid in identifying priority barrier removal projects that can be

accomplished with the assistance of regional fisheries enhancement groups. The department of transportation shall provide engineering and other technical services to assist regional fisheries enhancement groups with fish passage barrier removal projects, provided that the barrier removal projects have been identified as a priority by the department of fish and wildlife and the department of transportation has received an appropriation to continue the fish barrier removal program. [1995 c 367 § 3.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.180 Field testing of remote site incubators.

The department shall coordinate with the regional fisheries enhancement group advisory board to field test coho and chinook salmon remote site incubators. The purpose of field testing efforts shall be to gather conclusive scientific data on the effectiveness of coho and chinook remote site incubators. [1995 c 367 § 10.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.900 Severability—1985 c 458. 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 458 § 12.]

Chapter 75.52

VOLUNTEER COOPERATIVE FISH AND WILDLIFE ENHANCEMENT PROGRAM

Sections

75.52.010	Legislative findings—Department to administer cooperative enhancement program.
75.52.020	Definitions.
75.52.030	Cooperative projects—Types.
75.52.035	Cooperative projects—Sale of surplus salmon eggs and carcasses.
75.52.040	Duties of department.
75.52.050	Commission to establish rules—Subjects.
75.52.060	Agreements for cooperative projects—Duration.
75.52.070	Duties of volunteer group.
75.52.080	Application of chapter.
75.52.100	Cedar river spawning channel.
75.52.110	Cedar river spawning channel—Technical committee—Policy committee.
75.52.120	Cedar river spawning channel—Specifications.
75.52.130	Cedar river spawning channel—Funding.
75.52.140	Cedar river spawning channel—Transfer of funds.
75.52.150	Cedar river spawning channel—Legislative declaration.
75.52.160	Cedar river spawning channel—Mitigation of water diversion projects.
75.52.900	Severability—1984 c 72.

75.52.010 Legislative findings—Department to administer cooperative enhancement program. The fish and wildlife resources of the state benefit by the contribution of volunteer recreational and commercial fishing organizations, schools, and other volunteer groups in cooperative projects under agreement with the department. These projects provide educational opportunities, improve the communication between the natural resources agencies and the public, and increase the fish and game resources of the

state. In an effort to increase these benefits and realize the full potential of cooperative projects, the department shall administer a cooperative fish and wildlife enhancement program and enter agreements with volunteer groups relating to the operation of cooperative projects. [1993 sp.s. c 2 § 49; 1988 c 36 § 41; 1984 c 72 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.52.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Volunteer group" means any person or group of persons interested in or party to an agreement with the department relating to a cooperative fish or wildlife project.

(2) "Cooperative project" means a project conducted by a volunteer group that will benefit the fish, shellfish, game bird, nongame wildlife, or game animal resources of the state and for which the benefits of the project, including fish and wildlife reared and released, are available to all citizens of the state. Indian tribes may elect to participate in cooperative fish and wildlife projects with the department.

(3) "Department" means the department of fish and wildlife. [1993 sp.s. c 2 § 50; 1988 c 36 § 42; 1984 c 72 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.52.030 Cooperative projects—Types. The department shall encourage and support the development and operation of cooperative projects of the following types:

(1) Cooperative food fish and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Cooperative fish habitat improvement projects, including but not limited to fish migration improvement, spawning bed rehabilitation, habitat restoration, reef construction, lake fertilization, pond construction, pollution abatement, and endangered stock protection;

(3) Cooperative fish or game research projects if the project is clearly of a research nature and if the results are readily available to the public;

(4) Cooperative game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding;

(5) Cooperative nongame wildlife projects, including but not limited to habitat improvement and restoration, nest box installation, establishment of wildlife interpretive areas or facilities, pollution abatement, supplemental feeding, and endangered species preservation and enhancement; and

(6) Cooperative information and education projects, including but not limited to landowner relations, outdoor ethics, natural history of Washington's fish, shellfish, and wildlife, and outdoor survival. [1984 c 72 § 3.]

75.52.035 Cooperative projects—Sale of surplus salmon eggs and carcasses. The department may authorize

the sale of surplus salmon eggs and carcasses by permitted cooperative projects for the purposes of defraying the expenses of the cooperative project. In no instance shall the department allow a profit to be realized through such sales. The department shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [1993 sp.s. c 2 § 51; 1987 c 48 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Sale of surplus salmon eggs by department: RCW 75.08.245.

75.52.040 Duties of department. (1) The department shall:

(a) Encourage and support the establishment of cooperative agreements for the development and operation of cooperative food fish, shellfish, game fish, game bird, game animal, and nongame wildlife projects, and projects which provide an opportunity for volunteer groups to become involved in resource and habitat-oriented activities. All cooperative projects shall be fairly considered in the approval of cooperative agreements;

(b) Identify regions and species or activities that would be particularly suitable for cooperative projects providing benefits compatible with department goals;

(c) Determine the availability of rearing space at operating facilities or of net pens, egg boxes, portable rearing containers, incubators, and any other rearing facilities for use in cooperative projects, and allocate them to volunteer groups as fairly as possible;

(d) Exempt volunteer groups from payment of fees to the department for activities related to the project;

(e) Publicize the cooperative program;

(f) Not substitute a new cooperative project for any part of the department's program unless mutually agreeable to the department and volunteer group;

(g) Not approve agreements that are incompatible with legally existing land, water, or property rights.

(2) The department may, when requested, provide to volunteer groups its available professional expertise and assist the volunteer group to evaluate its project. [1987 c 505 § 73; 1984 c 72 § 4.]

75.52.050 Commission to establish rules—Subjects.

The commission shall establish by rule:

(1) The procedure for entering a cooperative agreement and the application forms for a permit to release fish or wildlife required by RCW 75.08.295 or 77.16.150. The procedure shall indicate the information required from the volunteer group as well as the process of review by the department. The process of review shall include the means to coordinate with other agencies and Indian tribes when appropriate and to coordinate the review of any necessary hydraulic permit approval applications.

(2) The procedure for providing within forty-five days of receipt of a proposal a written response to the volunteer group indicating the date by which an acceptance or rejection of the proposal can be expected, the reason why the date was selected, and a written summary of the process of review. The response should also include any suggested modifications to the proposal which would increase its likeli-

hood of approval and the date by which such modified proposal could be expected to be accepted. If the proposal is rejected, the department must provide in writing the reasons for rejection. The volunteer group may request the director or the director's designee to review information provided in the response.

(3) The priority of the uses to which eggs, seed, juveniles, or brood stock are put. Use by cooperative projects shall be second in priority only to the needs of programs of the department or of other public agencies within the territorial boundaries of the state. Sales of eggs, seed, juveniles, or brood stock have a lower priority than use for cooperative projects.

(4) The procedure for notice in writing to a volunteer group of cause to revoke the agreement for the project and the procedure for revocation. Revocation shall be documented in writing to the volunteer group. Cause for revocation may include: (a) The unavailability of adequate biological or financial resources; (b) the development of unacceptable biological or resource management conflicts; or (c) a violation of agreement provisions. Notice of cause to revoke for a violation of agreement provisions may specify a reasonable period of time within which the volunteer group must comply with any violated provisions of the agreement.

(5) An appropriate method of distributing among volunteer groups fish, bird, or animal food or other supplies available for the program. [1995 1st sp.s. c 2 § 42 (Referendum Bill No. 45, approved November 7, 1995); 1984 c 72 § 5.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.52.060 Agreements for cooperative projects—Duration. Agreements under this chapter may be for up to five years, with the department attempting to maximize the duration of each cooperative agreement. The duration of the agreement should reflect the financial and volunteer commitment and the stability of the volunteer group as well as the department's expectation of resource availability and project contributions to the resource. [1984 c 72 § 6.]

75.52.070 Duties of volunteer group. (1) The volunteer group shall:

(a) Provide care and diligence in conducting the cooperative project; and

(b) Maintain accurately the required records of the project on forms provided by the department.

(2) The volunteer group shall acknowledge that fish and game reared in cooperative projects are public property and must be handled and released for the benefit of all citizens of the state. The fish and game are to remain public property until reduced to private ownership under rules of the department. [1984 c 72 § 7.]

75.52.080 Application of chapter. This chapter applies to cooperative projects which were in existence on June 7, 1984, or which require no further funding. Implementation of this chapter for new projects requiring funding

shall be to the extent that funds are available from the aquatic land enhancement account. [1984 c 72 § 8.]

75.52.100 Cedar river spawning channel. A salmon spawning channel shall be constructed on the Cedar river with the assistance and cooperation of the department. The department shall use existing personnel and the volunteer fisheries enhancement program outlined under chapter 75.52 RCW to assist in the planning, construction, and operation of the spawning channel. [1993 sp.s. c 2 § 52; 1989 c 85 § 3.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Project designation—1989 c 85: "The legislature hereby designates the Cedar river sockeye salmon enhancement project as a "Washington state centennial salmon venture."" [1989 c 85 § 1.]

Legislative finding—1989 c 85: "The legislature recognizes that King county has a unique urban setting for a recreational fishery and that Lake Washington and the rivers flowing into it should be developed for greater salmon production. A Lake Washington fishery is accessible to fifty percent of the state's citizens by automobile in less than one hour. There has been extensive sockeye fishing success in Lake Washington, primarily from fish originating in the Cedar river. The legislature intends to enhance the Cedar river fishery by active state and local management and intends to maximize the Lake Washington sockeye salmon runs for recreational fishing for all of the citizens of the state. A sockeye enhancement program could produce two to three times the current numbers of returning adults. A sockeye enhancement project would increase the public's appreciation of our state's fisheries, would demonstrate the role of a clean environment, and would show that positive cooperation can exist between local and state government in planning and executing programs that directly serve the public. A spawning channel in the Cedar river has been identified as an excellent way to enhance the Lake Washington sockeye run. A public utility currently diverting water from the Cedar river for beneficial public use has expressed willingness to fund the planning, design, evaluation, construction, and operation of a spawning channel on the Cedar river." [1989 c 85 § 2.]

Severability—1989 c 85: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 85 § 11.]

75.52.110 Cedar river spawning channel—Technical committee—Policy committee. The department shall chair a technical committee, which shall review the preparation of enhancement plans and construction designs for a Cedar river sockeye spawning channel. The technical committee shall consist of not more than eight members: One representative each from the department, national marine fisheries service, United States fish and wildlife service, and Muckleshoot Indian tribe; and four representatives from the public utility described in RCW 75.52.130. The technical committee will be guided by a policy committee, also to be chaired by the department, which shall consist of not more than six members: One representative from the department, one from the Muckleshoot Indian tribe, and one from either the national marine fisheries service or the United States fish and wildlife service; and three representatives from the public utility described in RCW 75.52.130. The policy committee shall present a progress report to the senate and house of representatives natural resources and environment committees by January 1, 1990, and shall oversee the operation and evaluation of the spawning channel. The policy committee will continue its oversight until the policy committee concludes that the channel is meeting the produc-

tion goals specified in RCW 75.52.120. [1993 sp.s. c 2 § 53; 1989 c 85 § 4.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.120 Cedar river spawning channel—Specifications. The channel shall be designed to produce, at a minimum, fry comparable in quality to those produced in the Cedar river and equal in number to what could be produced naturally by the estimated two hundred sixty-two thousand adults that could have spawned upstream of the Landsburg diversion. Construction of the spawning channel shall commence no later than September 1, 1990. Initial construction size shall be adequate to produce fifty percent or more of the production goal specified in this section. [1989 c 85 § 5.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.130 Cedar river spawning channel—Funding. The legislature recognizes that, if funding for planning, design, evaluation, construction, and operating expenses is provided by a public utility that diverts water for beneficial public use, and if the performance of the spawning channel meets the production goals described in RCW 75.52.120, the spawning channel project will serve, at a minimum, as compensation for lost sockeye salmon spawning habitat upstream of the Landsburg diversion. The amount of funding to be supplied by said utility will fully fund the total cost of planning, design, evaluation, and construction of the spawning channel. [1989 c 85 § 6.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.140 Cedar river spawning channel—Transfer of funds. In order to provide operation and maintenance funds for the facility authorized by RCW 75.52.100 through 75.52.160, the utility shall place two million five hundred thousand dollars in the state general fund Cedar river channel construction and operation account herein created. The interest from the fund shall be used for operation and maintenance of the spawning channel and any unused interest shall be added to the fund to increase the principal to cover possible future operation cost increases. The state treasurer may invest funds from the account as provided by law. [1989 c 85 § 7.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.150 Cedar river spawning channel—Legislative declaration. The legislature hereby declares that the construction of the Cedar river sockeye spawning channel is in the best interests of the state of Washington. [1989 c 85 § 9.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.160 Cedar river spawning channel—Mitigation of water diversion projects. Should the requirements of RCW 75.52.100 through 75.52.160 not be met, the department shall seek immediate legal clarification of the steps which must be taken to fully mitigate water diversion projects on the Cedar river. [1993 sp.s. c 2 § 54; 1989 c 85 § 10.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.900 Severability—1984 c 72. 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 72 § 9.]

Chapter 75.54

RECREATIONAL SALMON AND MARINE FISH ENHANCEMENT PROGRAM

Sections

75.54.005	Findings.
75.54.010	Program created—Coordinator.
75.54.020	Department responsibilities.
75.54.030	Planning and operation of programs—Assistance from non-departmental sources.
75.54.040	Delayed-release chinook salmon—Freshwater rearing.
75.54.050	Marine bottomfish species—Research, methods, and programs for artificial rearing.
75.54.060	Additional research.
75.54.070	Siting process for enhancement projects—Cooperation with other entities.
75.54.080	Public awareness program.
75.54.090	Management of predators.
75.54.100	Plans to target hatchery-produced fish—Participation by fishing interests—Feasibility of increased survival and production of chinook and coho salmon.
75.54.110	Coordination of sport fishing program with wild stock initiative.
75.54.120	Increased recreational access to salmon and marine fish resources—Plans.
75.54.130	Recreational fishing projects—Contracting with entities.
75.54.140	Annual recreational surcharge.
75.54.150	Recreational fisheries enhancement account.
75.54.900	Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100.
75.54.901	Severability—1993 sp.s. c 2.

75.54.005 Findings. The legislature finds that recreational fishing opportunities for salmon and marine bottomfish have been dwindling in recent years. It is important to restore diminished recreational fisheries and to enhance the salmon and marine bottomfish resource to assure sustained productivity. Investments made in recreational fishing programs will repay the people of the state many times over in increased economic activity and in an improved quality of life. [1993 sp.s. c 2 § 82.]

75.54.010 Program created—Coordinator. There is created within the department of fish and wildlife the Puget Sound recreational salmon and marine fish enhancement program. The department of fish and wildlife shall identify

a coordinator for the program who shall act as spokesperson for the program and shall:

(1) Coordinate the activities of the Puget Sound recreational salmon and marine fish enhancement program, including the Lake Washington salmon fishery;

(2) Provide reports as needed to the legislature and the public; and

(3) Work within and outside of the department to achieve the goals stated in this chapter. [1993 sp.s. c 2 § 83.]

75.54.020 Department responsibilities. The department shall: Develop a short-term program of hatchery-based salmon enhancement using freshwater pond sites for the final rearing phase; solicit support from cooperative projects, regional enhancement groups, and other supporting organizations; conduct comprehensive research on resident and migratory salmon production opportunities; and conduct research on marine bottomfish production limitations and on methods for artificial propagation of marine bottomfish.

Long-term responsibilities of the department are to: Fully implement enhancement efforts for Puget Sound and Hood Canal resident salmon and marine bottomfish; identify opportunities to reestablish salmon runs into areas where they no longer exist; encourage naturally spawning salmon populations to develop to their fullest extent; and fully utilize hatchery programs to improve recreational fishing. [1993 sp.s. c 2 § 84.]

75.54.030 Planning and operation of programs—Assistance from nondepartmental sources. The department shall seek recommendations from persons who are expert on the planning and operation of programs for enhancement of recreational fisheries. The department shall fully use the expertise of the University of Washington college of fisheries and the sea grant program to develop research and enhancement programs. [1993 sp.s. c 2 § 85.]

75.54.040 Delayed-release chinook salmon—Freshwater rearing. The department shall develop new locations for the freshwater rearing of delayed-release chinook salmon. In calendar year 1994, at least one freshwater pond chinook salmon rearing site shall be developed and begin production in each of the following areas: South Puget Sound, central Puget Sound, north Puget Sound, and Hood Canal. Natural or artificial pond sites shall be preferred to net pens due to higher survival rates experienced from pond rearing. Rigorous predatory bird control measures shall be implemented. The goal of the program is to increase the production and planting of delayed-release chinook salmon to a level of three million fish annually by the year 2000. [1993 sp.s. c 2 § 86.]

75.54.050 Marine bottomfish species—Research, methods, and programs for artificial rearing. The department shall conduct research, develop methods, and implement programs for the artificial rearing and release of marine bottomfish species. Lingcod, halibut, rockfish, and Pacific cod shall be the species of primary emphasis due to their importance in the recreational fishery. [1993 sp.s. c 2 § 87.]

75.54.060 Additional research. The department shall undertake additional research to more fully evaluate improved enhancement techniques, hooking mortality rates, methods of mass marking, improvement of catch models, and sources of marine bottomfish mortality. Research shall be designed to give the best opportunity to provide information that can be applied to real-world recreational fishing needs. [1993 sp.s. c 2 § 88.]

75.54.070 Siting process for enhancement projects—Cooperation with other entities. The department shall work with the department of ecology and local government entities to streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects. [1994 c 264 § 47; 1993 sp.s. c 2 § 89.]

75.54.080 Public awareness program. The department's information and education section shall develop a public awareness program designed to educate the public on the elements of the recreational fishing program and to recruit volunteers to assist the department in implementing recreational fishing projects. Economic benefits of the program shall be emphasized. [1993 sp.s. c 2 § 90.]

75.54.090 Management of predators. The department shall increase efforts to document the effects of bird predators, harbor seals, sea lions, and predatory fish upon the salmon and marine fish resource. Every opportunity shall be explored to convince the federal government to amend the marine mammal protection act to allow for balanced management of predators, as well as to work with the United States fish and wildlife service to achieve workable control measures for predatory birds. [1993 sp.s. c 2 § 91.]

75.54.100 Plans to target hatchery-produced fish—Participation by fishing interests—Feasibility of increased survival and production of chinook and coho salmon. Indian tribal fishing interests and non-Indian commercial fishing groups shall be invited to participate in development of plans for selective fisheries that target hatchery-produced fish and minimize catch of naturally spawned fish. In addition, talks shall be initiated on the feasibility of altering the rearing programs of department hatcheries to achieve higher survival and greater production of chinook and coho salmon. [1993 sp.s. c 2 § 92.]

75.54.110 Coordination of sport fishing program with wild stock initiative. The department shall coordinate the sport fishing program with the wild stock initiative to assure that the two programs are compatible and potential conflicts are avoided. [1993 sp.s. c 2 § 93.]

75.54.120 Increased recreational access to salmon and marine fish resources—Plans. The department shall develop plans for increased recreational access to salmon and marine fish resources. Proposals for new boat launching

ramps and pier fishing access shall be developed. [1993 sp.s. c 2 § 94.]

75.54.130 Recreational fishing projects—Contracting with entities. The department shall contract with private consultants, aquatic farms, or construction firms, where appropriate, to achieve the highest benefit-to-cost ratio for recreational fishing projects. [1993 sp.s. c 2 § 95.]

75.54.140 Annual recreational surcharge. Beginning January 1, 1994, persons who recreationally fish for salmon or marine bottomfish in marine area codes 5 through 13 and Lake Washington shall be assessed an annual recreational surcharge of ten dollars, in addition to other licensing requirements. Funds from the surcharge shall be deposited in the recreational fisheries enhancement account created in RCW 75.54.150, except that the first five hundred thousand dollars shall be deposited in the general fund before June 30, 1995, to repay the appropriation made by section 104, chapter 2, Laws of 1993 sp. sess. [1993 sp.s. c 2 § 97.]

75.54.150 Recreational fisheries enhancement account. The recreational fisheries enhancement account is created in the state treasury. All receipts from RCW 75.54.140 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for recreational fisheries enhancement programs. [1993 sp.s. c 2 § 98.]

75.54.900 Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100. Sections 7, 60, 80, and 82 through 100 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 sp.s. c 2 § 105.]

75.54.901 Severability—1993 sp.s. c 2. See RCW 43.300.901.

Chapter 75.56

SALMON AND STEELHEAD TROUT— MANAGEMENT OF RESOURCES

Sections

75.56.010	Declaration.
75.56.020	Petition to congress.
75.56.030	Management of natural resources—State policy.
75.56.040	Declaration—Denial of rights based on race, sex, origin, or cultural heritage.
75.56.900	Transmittal of act to president and congress—1985 c 1.
75.56.905	Severability—1985 c 1.

75.56.010 Declaration. The people of the state of Washington declare that an emergency exists in the management of salmon and steelhead trout resources such that both are in great peril. An immediate resolution of this crisis is essential to perpetuating and enhancing these resources. [1985 c 1 § 1 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.020 Petition to congress. The people of the state of Washington petition the United States Congress to immediately make the steelhead trout a national game fish protected under the Black Bass Act. [1985 c 1 § 2 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.030 Management of natural resources—State policy. The people of the state of Washington declare that conservation, enhancement, and proper utilization of the state's natural resources, including but not limited to lands, waters, timber, fish, and game are responsibilities of the state of Washington and shall remain within the express domain of the state of Washington.

While fully respecting private property rights, all resources in the state's domain shall be managed by the state alone such that conservation, enhancement, and proper utilization are the primary considerations. No citizen shall be denied equal access to and use of any resource on the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same. [1985 c 1 § 3 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.040 Declaration—Denial of rights based on race, sex, origin, or cultural heritage. The people of the state of Washington declare that under the Indians Citizens Act of 1924, all Indians became citizens of the United States and subject to the Constitution and laws of the United States and state in which they reside. The people further declare that any special off-reservation legal rights or privileges of Indians established through treaties that are denied to other citizens were terminated by that 1924 enactment, and any denial of rights to any citizen based upon race, sex, origin, cultural heritage, or by and through any treaty based upon the same is unconstitutional.

No rights, privileges, or immunities shall be denied to any citizen upon the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same. [1985 c 1 § 4 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.900 Transmittal of act to president and congress—1985 c 1. The secretary of state shall transmit copies of this act to the president of the United States senate, the speaker of the United States house of representatives, and each member of congress. [1985 c 1 § 5 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.905 Severability—1985 c 1. 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 1 § 6 (Initiative Measure No. 456, approved November 6, 1984).]

Chapter 75.58

AQUACULTURE DISEASE CONTROL

Sections

- 75.58.010 Disease inspection and control for aquatic farmers—Development of program—Elements—Rules—Violations.
- 75.58.020 Disease inspection and control program—User fees—Aquaculture disease control account.
- 75.58.030 Consultation required—Agreements for diagnostic field services authorized—Roster of biologists.
- 75.58.040 Registration of aquatic farmers.
- Aquaculture marketing: Chapter 15.85 RCW.*

75.58.010 Disease inspection and control for aquatic farmers—Development of program—Elements—Rules—Violations. (1) The director of agriculture and the director shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020. The program shall be administered by the department under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

- (a) Disease diagnosis;
- (b) Import and transfer requirements;
- (c) Provision for certification of stocks;
- (d) Classification of diseases by severity;
- (e) Provision for treatment of selected high-risk diseases;
- (f) Provision for containment and eradication of high-risk diseases;
- (g) Provision for destruction of diseased cultured aquatic products;
- (h) Provision for quarantine of diseased cultured aquatic products;
- (i) Provision for coordination with state and federal agencies;
- (j) Provision for development of preventative or control measures;
- (k) Provision for cooperative consultation service to aquatic farmers; and
- (l) Provision for disease history records.

(2) The director shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department by these rules and by RCW *75.08.080(1)(g), 75.24.080, 75.24.110, 75.28.125, 75.58.020, 75.58.030, and 75.58.040 constitute the only authorities of the department to regulate private sector cultured aquatic products and aquatic farmers as defined in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if

the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) It is unlawful for any person to violate the rules adopted under subsection (2) or (3) of this section or to violate RCW 75.58.040.

(5) In administering the program established under this section, the department shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to the aquaculture industry that are more rigorous than those placed on the department or other fish-rearing entities. [1993 sp.s. c 2 § 55; 1988 c 36 § 43; 1985 c 457 § 8.]

***Reviser's note:** Rule-making authority under RCW 75.08.080 was transferred from the director of fisheries to the fish and wildlife commission by 1995 1st sp.s. c 2 (Referendum Bill No. 45).

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.58.020 Disease inspection and control program—

User fees—Aquaculture disease control account. The directors of agriculture and fish and wildlife shall jointly adopt by rule, in the manner prescribed in RCW 75.58.010(2), a schedule of user fees for the disease inspection and control program established under RCW 75.58.010. The fees shall be established such that the program shall be entirely funded by revenues derived from the user fees by the beginning of the 1987-89 biennium.

There is established in the state treasury an account known as the aquaculture disease control account which is subject to appropriation. Proceeds of fees charged under this section shall be deposited in the account. Moneys from the account shall be used solely for administering the disease inspection and control program established under RCW 75.58.010. [1993 sp.s. c 2 § 56; 1985 c 457 § 9.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.58.030 Consultation required—Agreements for diagnostic field services authorized—Roster of biologists.

(1) The director shall consult regarding the disease inspection and control program established under RCW 75.58.010 with federal agencies and Indian tribes to assure protection of state, federal, and tribal aquatic resources and to protect private sector cultured aquatic products from disease that could originate from waters or facilities managed by those agencies.

(2) With regard to the program, the director may enter into contracts or interagency agreements for diagnostic field services with government agencies and institutions of higher education and private industry.

(3) The director shall provide for the creation and distribution of a roster of biologists having a speciality [specialty] in the diagnosis or treatment of diseases of fish or shellfish. The director shall adopt rules specifying the qualifications which a person must have in order to be placed on the roster. [1993 sp.s. c 2 § 57; 1988 c 36 § 44; 1985 c 457 § 10.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.58.040 Registration of aquatic farmers. All aquatic farmers as defined in RCW 15.85.020 shall register with the department. The director shall develop and maintain a registration list of all aquaculture farms. Registered aquaculture farms shall provide the department production statistical data. The state veterinarian shall be provided with registration and statistical data by the department. [1993 sp.s. c 2 § 58; 1988 c 36 § 45; 1985 c 457 § 11.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Chapter 75.98

CONSTRUCTION

Sections

75.98.005	Intent—1983 1st ex.s. c 46.
75.98.006	Savings—1983 1st ex.s. c 46.
75.98.007	Effective date—1983 1st ex.s. c 46.
75.98.030	Severability—1983 1st ex.s. c 46.

75.98.005 Intent—1983 1st ex.s. c 46. In enacting this 1983 act, it is the intent of the legislature to revise and reorganize the fisheries code of this state to clarify and improve the administration of the state's fisheries laws. Unless the context clearly requires otherwise, the revisions made to the fisheries code by this act are not to be construed as substantive. [1983 1st ex.s. c 46 § 1.]

75.98.006 Savings—1983 1st ex.s. c 46. This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act. [1983 1st ex.s. c 46 § 183.]

75.98.007 Effective date—1983 1st ex.s. c 46. This act shall take effect on January 1, 1984. [1983 1st ex.s. c 46 § 191.]

75.98.030 Severability—1983 1st ex.s. c 46. 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. [1983 1st ex.s. c 46 § 174; 1955 c 12 § 75.98.030.]

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01** General provisions.
- 76.04** Forest protection.
- 76.06** Forest insect and disease control.
- 76.09** Forest practices.
- 76.10** Surface mining.
- 76.12** Reforestation.
- 76.13** Stewardship of nonindustrial forests and woodlands.
- 76.14** Forest rehabilitation.
- 76.15** Community and urban forestry.
- 76.16** Access to state timber and other valuable material.
- 76.20** Firewood on state lands.
- 76.36** Marks and brands.
- 76.42** Wood debris—Removal from navigable waters.
- 76.44** Institute of forest resources.
- 76.48** Specialized forest products.
- 76.52** Cooperative forest management services act.
- 76.56** Center for international trade in forest products.

Access roads to public and state forest lands: Chapter 79.38 RCW.

County timber: Chapter 36.34 RCW.

Easements over public lands: RCW 79.01.312 through 79.01.336, 79.36.230 through 79.36.290.

Exchange of state lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.08.180 through 79.08.200.

Excise tax on conveyance of standing timber: Chapter 82.45 RCW.

Forest management, major line at state universities: RCW 28B.10.115, 28B.20.060.

Forest roads, county: RCW 36.82.140.

Infractions: Chapter 7.84 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Limitation on liability of forest landowner for injuries to recreation users: RCW 4.24.210.

Logging railroads: Title 81 RCW.

Logging trucks, special permits for use of roads and highways: RCW 46.44.047.

Logs on county highways and bridges: RCW 36.86.090.

Measurement of timber and wood products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Motor vehicle size, weight and load: Chapter 46.44 RCW.

National forests, jurisdiction: Chapter 37.08 RCW.

Pest control compact: Chapter 17.34 RCW.

Reservation of timber on sale of county tax-title lands: RCW 84.64.270.

Safety supervisor: RCW 43.22.040.

Sustained yield plan and cooperative agreements: Chapter 79.60 RCW.

Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.

Transportation of forest products, applicability of public utility tax: RCW 82.16.020.

University demonstration forest and experiment station: RCW 79.08.070.

Chapter 76.01

GENERAL PROVISIONS

Sections

- 76.01.010 Sale of other than state forest lands.
- 76.01.020 Sale of other than state forest lands—Procedure.
- 76.01.030 Sale of other than state forest lands—Disposition of revenue.
- 76.01.040 Federal funds for management and protection of forests, forest and range lands.
- 76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds.
- 76.01.060 Right of entry in course of duty by representatives of department of natural resources.

76.01.010 Sale of other than state forest lands. The department of natural resources is hereby authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state, either in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures or other purposes whenever it shall determine that said lands are no longer or not necessary for public use. [1988 c 128 § 12; 1955 c 121 § 1.]

76.01.020 Sale of other than state forest lands—Procedure. The sale may be made after public notice to the highest bidder for such a price as shall be approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title shall be executed by the governor in form approved by the attorney general. [1955 c 121 § 2.]

76.01.030 Sale of other than state forest lands—Disposition of revenue. All amounts received from the sale shall be credited to the fund of the department of government responsible for the acquisition and maintenance of the property sold. [1955 c 121 § 3.]

76.01.040 Federal funds for management and protection of forests, forest and range lands. The department of natural resources is hereby authorized to receive funds from the federal government for cooperative work in management and protection of forests and forest and range lands as may be authorized by any act of Congress which is now, or may hereafter be, adopted for such purposes. [1988 c 128 § 13; 1957 c 78 § 1.]

76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds. The department of natural resources is hereby authorized to disburse such funds, together with any funds which may be appropriated or contributed from any source for such purposes, on management and protection

of forests and forest and range lands. [1988 c 128 § 14; 1957 c 78 § 2.]

76.01.060 Right of entry in course of duty by representatives of department of natural resources. Any authorized assistants, employees, agents, appointees or representatives of the department of natural resources may, in the course of their inspection and enforcement duties as provided for in chapters 76.04, 76.06, 76.09, 76.16, 76.36 and *76.40 RCW, enter upon any lands, real estate, waters or premises except the dwelling house or appurtenant buildings in this state whether public or private and remain thereon while performing such duties. Similar entry by the department of natural resources may be made for the purpose of making examinations, locations, surveys and/or appraisals of all lands under the management and jurisdiction of the department of natural resources; or for making examinations, appraisals and, after five days' written notice to the landowner, making surveys for the purpose of possible acquisition of property to provide public access to public lands. In no event other than an emergency such as fire fighting shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner. None of the entries herein provided for shall constitute trespass, but nothing contained herein shall limit or diminish any liability which would otherwise exist as a result of the acts or omissions of said department or its representatives. [1983 c 3 § 194; 1971 ex.s. c 49 § 1; 1963 c 100 § 1.]

*Reviser's note: Chapter 76.40 RCW was repealed by 1994 c 163 § 6.

Chapter 76.04 FOREST PROTECTION

Sections

ADMINISTRATION

- 76.04.005 Definitions.
- 76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration.
- 76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.
- 76.04.025 Federal funds.
- 76.04.035 Wardens—Appointment—Duties.
- 76.04.045 Rangers—Appointment—Ex officio rangers—Compensation.
- 76.04.055 Service of notices.
- 76.04.065 Arrests without warrants.
- 76.04.075 Rules—Penalty.
- 76.04.085 Penalty for violations.
- 76.04.095 Cooperative protection.
- 76.04.105 Contracts for protection and development.
- 76.04.115 Articles of incorporation—Requirements.
- 76.04.125 Requisites of contract.
- 76.04.135 Cooperative agreements—Public agencies.
- 76.04.145 Forest fire advisory board.
- 76.04.155 Fire fighting—Employment—Assistance.
- 76.04.165 Legislative declaration—Forest protection zones.
- 76.04.167 Legislative declaration—Coordinated forest fire protection and suppression.
- 76.04.175 Fire suppression equipment—Comparison of costs.
- 76.04.177 Fire suppression equipment—Requirement to utilize private equipment.

PERMITS

- 76.04.205 Burning permits.
- 76.04.215 Burning mill wood waste—Arresters.
- 76.04.235 Dumping mill waste, forest debris—Penalty.

- 76.04.246 Use of blasting fuse.

CLOSURES/SUSPENSIONS

- 76.04.305 Closed to entry—Designation.
- 76.04.315 Suspension of burning permits/privileges.
- 76.04.325 Closure of forest operations or forest lands.

FIRE PROTECTION REGULATION

- 76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated.
- 76.04.415 Penalty for violations—Work stoppage notice.
- 76.04.425 Unauthorized entry into sealed fire tool box.
- 76.04.435 Deposit of fire or live coals.
- 76.04.445 Reports of fire.
- 76.04.455 Lighted material, etc.—Receptacles in conveyances.
- 76.04.465 Certain snags to be felled currently with logging.
- 76.04.475 Reimbursement for costs of suppression action.
- 76.04.486 Escaped slash burns—Obligations.
- 76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien.

ASSESSMENTS, OBLIGATIONS, FUNDS

- 76.04.600 Owners to protect forests.
- 76.04.610 Forest fire protection assessment.
- 76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account.
- 76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments.

HAZARD ABATEMENT

- 76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land.
- 76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs.

FIRE REGULATION

- 76.04.700 Failure to extinguish campfire.
- 76.04.710 Wilful setting of fire.
- 76.04.720 Removal of notices.
- 76.04.730 Negligent fire—Spread.
- 76.04.740 Reckless burning.
- 76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.
- 76.04.900 Captions—1986 c 100.

Burning permits within fire protection districts: RCW 52.12.101.

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers and pressure vessels, construction, installation, inspection, and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.01.756.

ADMINISTRATION

76.04.005 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(6) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(7) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(8) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

(9) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(10) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(11) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(12) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(13) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(14) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(15) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(16) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property. [1992 c 52 § 24; 1986 c 100 § 1.]

76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration. (1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and direct the work of suppressing forest fires;

(c) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if: (i) The evidence is used by the owner in conducting a business or in providing an electric utility service; and (ii) the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this paragraph does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state; and

(f) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timber lands within the state;

(ii) The extent to which timber lands are being destroyed by fire and the damage thereon.

(5) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest fire fighting and patrol. [1993 c 196 § 3; 1986 c 100 § 2.]

76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.

The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner. [1993 c 196 § 1.]

76.04.025 Federal funds. The department shall receive and disburse any and all moneys contributed, allotted, or paid by the United States under the authority of any act of Congress for use in cooperation with the state of Washington in protecting and developing forests. [1986 c 100 § 3.]

76.04.035 Wardens—Appointment—Duties. (1) The department may appoint any of its employees as wardens, at the times and localities as it considers the public welfare

demands, within any area of the state where there is forest land requiring protection.

(2) The duties of wardens shall be:

(a) To provide forest fire prevention and protection information to the public;

(b) To investigate discovered or reported fires on forest lands and take appropriate action;

(c) To patrol their areas as necessary;

(d) To visit all parts of their area, and frequented places and camps as far as possible, and warn campers or other users and visitors of fire hazards;

(e) To see that all locomotives and all steam, internal combustion, and other spark-emitting equipment are provided with spark arresters and adequate devices for preventing the escape of fire or sparks in accordance with the law;

(f) To see that operations or activities on forest land have all required fire prevention and suppression equipment or devices as required by law;

(g) To extinguish wildfires;

(h) To set back-fires to control fires;

(i) To summons, impress, and employ help in controlling wildfires;

(j) To see that all laws for the protection of forests are enforced;

(k) To investigate, arrest, and initiate prosecution of all offenders of this chapter or other chapters as allowed by law; and

(l) To perform all other duties as prescribed by law and as the department directs.

(3) All wardens and rangers shall render reports to the department on blanks or forms, or in the manner and at the times as may be ordered, giving a summary of how employed, the area visited, expenses incurred, and other information as required by the department.

(4) The department may suspend the authority of any warden who may be incompetent or unwilling to discharge properly the duties of the office.

(5) The department shall determine the placement of the wardens and, upon its request to the county commissioners of any county, the county commissioners shall designate and furnish the wardens with suitably equipped office quarters in the county courthouse.

(6) The authority of the wardens regarding the prevention, suppression, and control of forest fires, summoning, impressing, or employing help, or making arrests for violations of this chapter may extend to any part of the state. [1986 c 100 § 4.]

76.04.045 Rangers—Appointment—Ex officio rangers—Compensation.

(1) All Washington state patrol officers, wildlife agents, fisheries patrol officers, deputy state fire marshals, and state park rangers, while in their respective jurisdictions, shall be ex officio rangers.

(2) Employees of the United States forest service, when recommended by their forest supervisor, and citizens of the state advantageously located may, at the discretion of the department, be commissioned as rangers and vested with the certain powers and duties of wardens as specified in this chapter and as directed by the department.

(3) Rangers shall receive no compensation for their services except when employed in cooperation with the state

and under the provisions of this chapter and shall not create any indebtedness or incur any liability on behalf of the state: PROVIDED, That rangers actually engaged in extinguishing or preventing the spread of fire on forest land or elsewhere that may endanger forest land shall, when their accounts for such service have been approved by the department, be entitled to receive compensation for such services at a rate to be fixed by the department.

(4) The department may cancel the commission of any ranger or authority granted to any ex officio ranger who may be incompetent or unwilling to discharge properly the duties of the office. [1986 c 100 § 5.]

76.04.055 Service of notices. Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice. [1986 c 100 § 6.]

76.04.065 Arrests without warrants. Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law. [1986 c 100 § 7.]

76.04.075 Rules—Penalty. Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided. [1986 c 100 § 8.]

76.04.085 Penalty for violations. Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021. [1986 c 100 § 9.]

76.04.095 Cooperative protection. When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state. [1986 c 100 § 10.]

76.04.105 Contracts for protection and development. The department may enter into contracts and undertakings with private corporations for the protection and

development of the forest lands within the state, subject to the provisions of this chapter. [1986 c 100 § 11.]

76.04.115 Articles of incorporation—Requirements. Before any private corporation may enter into any contract under RCW 76.04.105, there shall be incorporated into the articles of incorporation or charter of such corporation a provision requiring that the corporation, out of its earnings or earned surplus, and in a manner satisfactory to the department, annually set apart funds to discharge any contract entered into between such corporation and the department. [1986 c 100 § 12.]

76.04.125 Requisites of contract. Any undertaking for the protection and development of the forest lands of the state under RCW 76.04.105 shall be regulated and controlled by a contract to be entered into between the private corporation and the department. The contract shall outline the lands involved and the conditions and details of the undertaking, including an exact specification of the amount of funds to be made available by the corporation and the time and manner of disbursement. Before entering into any such contract, the department shall be satisfied that the private corporation is financially solvent and will be able to carry out the project outlined in the contract. The department shall have charge of the project for the protection and development of the forest lands described in the contract, and any expense incurred by the department under any such contract shall be payable solely by the corporation from the funds provided by it for these purposes. The state of Washington shall not in any event be responsible to any person, firm, company, or corporation for any indebtedness created by any corporation under a contract pursuant to RCW 76.04.105. [1986 c 100 § 13.]

76.04.135 Cooperative agreements—Public agencies. (1) For the purpose of promoting and facilitating cooperation between fire protection agencies and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands. [1986 c 100 § 14.]

76.04.145 Forest fire advisory board. (1) There is hereby created a forest fire advisory board, consisting of seven members who shall represent private and public forest landowners and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at the commissioner's pleasure, without compensation.

(2) The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to:

(a) Reviewing forest fire prevention and suppression policies of the department;

(b) Monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account;

(c) Recommending appropriate assessments and allocations for establishment and replenishment of the account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern Washington;

(d) Recommending to the department appropriate rules or amendments to existing rules and reviewing nonemergency rules affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards.

(3) Except where an emergency exists, all rules concerning matters listed in subsection (2)(d) of this section shall be adopted by the department after consultation with the forest fire advisory board. [1986 c 100 § 15.]

76.04.155 Fire fighting—Employment—Assistance.

(1) The department may employ a sufficient number of persons to extinguish or prevent the spreading of any fire that may be in danger of damaging or destroying any timber or other property on department protected lands. The department may provide needed tools and supplies and may provide transportation when necessary for persons so employed.

(2) Every person so employed is entitled to compensation at a rate to be fixed by the department. The department shall, upon request, show the person the number of hours worked by that person and the rate established for payment. After approval of the department, that person is entitled to receive payment from the state.

(3) It is unlawful to fail to render assistance when called upon by the department to aid in guarding or extinguishing any fire. [1986 c 100 § 16.]

76.04.165 Legislative declaration—Forest protection zones. (1) The legislature finds and declares that forest lands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that, based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility has not kept pace with the increasing use of forest lands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forest land which the department is obligated to protect but shall not include forest land within rural fire districts or municipal fire districts

which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forest land not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement. [1995 c 151 § 2; 1988 c 273 § 2.]

76.04.167 Legislative declaration—Coordinated forest fire protection and suppression. (1) The legislature hereby finds and declares that forest wild fires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, structures, and other improvements; and that it is in the public interest to protect forests and forest resources by preventing and suppressing forest wild fires.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wild fires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the department to focus its efforts and resources on aggressively suppressing forest wild fires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the public interest to use fire under controlled conditions to prevent wild fires by maintaining healthy forests and eliminating sources of fuel. [1995 c 151 § 1.]

76.04.175 Fire suppression equipment—Comparison of costs. (1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires. [1995 c 113 § 2.]

Finding—Intent—1995 c 113: "The legislature finds that it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors

as allowed in RCW 76.04.015(4)(b), when such utilization will be most effective and efficient." [1995 c 113 § 1.]

76.04.177 Fire suppression equipment—Requirement to utilize private equipment. Before constructing or purchasing any equipment listed in RCW 76.04.175(1) for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased or constructed with the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient, the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder. [1995 c 113 § 3.]

Finding—Intent—1995 c 113: See note following RCW 76.04.175.

PERMITS

76.04.205 Burning permits. (1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

(a) Any flammable material on any lands under the protection of the department; or

(b) Refuse or waste forest material on forest lands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee. Conditions may be imposed in the permit for the protection of life, property, or air quality and [the department] may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

(a) All requirements relating to fire fighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;

(b) No unreasonable danger will result; and

(c) Burning will be done in compliance with air quality standards established by chapter 70.94 RCW.

(4) The department, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary in their judgment to prevent air pollution as provided in chapter 70.94 RCW. [1986 c 100 § 17.]

76.04.215 Burning mill wood waste—Arresters. (1) It is unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning within one-fourth of one mile of any forest material without properly confining the place of the burning and without further safeguarding the surrounding property against danger from the burning by such additional devices as the department may require.

(2) It is unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated within one-fourth of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting

outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney, or other spark-emitting outlet, a safe and suitable device for arresting sparks. [1986 c 100 § 18.]

76.04.235 Dumping mill waste, forest debris—Penalty. (1) No person may dump mill waste from forest products, or forest debris of any kind, in quantities that the department declares to constitute a forest fire hazard on or threatening forest lands located in this state without first obtaining a written permit issued by the department on such terms and conditions determined by the department pursuant to rules enacted to protect forest lands from fire. The permit is in addition to any other permit required by law.

(2) Any person who dumps such mill waste, or forest debris, without a permit, or in violation of a permit is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW 9A.20.021 and may further be required to remove all materials dumped. [1986 c 100 § 19.]

76.04.246 Use of blasting fuse. It is unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation without a permit during the closed season. Upon the issuance of a written permit by the department or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1986 c 100 § 20.]

CLOSURES/SUSPENSIONS

76.04.305 Closed to entry—Designation. (1) When, in the opinion of the department, any forest land is particularly exposed to fire danger, the department may designate such land as a region of extra fire hazard subject to closure, and the department shall adopt rules for the protection thereof.

(2) All such rules shall be published in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the department may determine.

(3) When in the opinion of the department it becomes necessary to close the region to entry, posters carrying the wording "Region of extra fire hazard-CLOSED TO ENTRY-except as provided by RCW 76.04.305" and indicating the beginning and ending dates of the closures shall be posted on the public highways entering the regions.

(4) The rules shall be in force from the time specified therein, but when in the opinion of the department such forest region continues to be exposed to fire danger, or ceases to be so exposed, the department may extend, suspend, or terminate the closure by proclamation.

(5) This section does not authorize the department to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area, but no one legally entering the region of extra fire hazard may use the area for recreational purposes which are prohibited to the general public under the terms of this section. [1986 c 100 § 21.]

76.04.315 Suspension of burning permits/privileges. In times and localities of unusual fire danger, the department may issue an order suspending any or all burning permits or privileges authorized by RCW 76.04.205 and may prohibit absolutely the use of fire in such locations. [1986 c 100 § 22.]

76.04.325 Closure of forest operations or forest lands. (1) When in the opinion of the department weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered, the department may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a fire to start. The shutdown shall be for the periods and regions designated in the order. During shutdowns, all persons are excluded from logging operating areas and areas of logging slash, except those present in the interest of fire protection.

(2) When in the opinion of the department extreme fire weather exists, whereby forest lands may be endangered, the department may issue an order restricting access to and activities on forest lands. The order shall describe the regions and extent of restrictions necessary to protect forest lands. During the period in which the order is in effect, all persons may be excluded from the regions described, except those persons present in the interest of fire protection.

(3) Each day's violation of an order under this section shall constitute a separate offense. [1986 c 100 § 23.]

FIRE PROTECTION REGULATION

76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated. It is unlawful during the closed season for any person to operate any steam, internal combustion, or electric engine, or any other spark-emitting equipment or device, on any forest land or in any place where, in the opinion of the department, fire could spread to forest land, without first complying with the requirements as may be established by the department by rule pursuant to this chapter. [1986 c 100 § 24.]

76.04.415 Penalty for violations—Work stoppage notice. (1) Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.215, 76.04.305, 76.04.405, or 76.04.650 or any rule adopted by the department concerning fire prevention and fire suppression preparedness shall cease operations until compliance with the provisions of the sections or rules specified in such notice.

(2) The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. [1986 c 100 § 25.]

76.04.425 Unauthorized entry into sealed fire tool box. It is unlawful to enter into a sealed fire tool box without authorization. [1986 c 100 § 26.]

76.04.435 Deposit of fire or live coals. No person operating a railroad may permit to be deposited by any

employee, and no one may deposit fire or live coals, upon the right of way within one-fourth of one mile of any forest material, during the closed season, unless the fire or live coals are immediately extinguished. [1986 c 100 § 27.]

76.04.445 Reports of fire. (1) Any person engaged in any activity on forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on forest lands.

(2) Railroad companies and other public carriers operating on or through forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on or adjacent to their right of way or route. [1986 c 100 § 28.]

76.04.455 Lighted material, etc.—Receptacles in conveyances. (1) It is unlawful during the closed season for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material or to discharge any tracer or incendiary ammunition in any forest, brush, range, or grain areas.

(2) It is unlawful during the closed season for any individual to smoke any flammable material when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(3) Every conveyance operated through or above forest, range, brush, or grain areas shall be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation. [1986 c 100 § 29.]

76.04.465 Certain snags to be felled currently with logging. Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall adopt rules relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1986 c 100 § 30.]

76.04.475 Reimbursement for costs of suppression action. Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may be recoverable pursuant to law. Reimbursement for

fires resulting from slash burns are subject to RCW 76.04.486.

(2) If the fire is started in the course of or as a result of land clearing operations, right of way clearing, or a landowner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reasonably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right of way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental. [1986 c 100 § 31.]

76.04.486 Escaped slash burns—Obligations. (1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forest lands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forest lands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner. [1986 c 100 § 32.]

76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien. (1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection. The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1993 c 196 § 2; 1986 c 100 § 33.]

ASSESSMENTS, OBLIGATIONS, FUNDS

76.04.600 Owners to protect forests. Every owner of forest land in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department. [1986 c 100 § 34.]

76.04.610 Forest fire protection assessment. (1) If any owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following as-

assessments on each parcel of such land: (a) A flat fee assessment of fourteen dollars and fifty cents; and (b) twenty-two cents on each acre exceeding fifty acres. Assessors may, at their option, collect the assessment on tax exempt lands. If the assessor elects not to collect the assessment, the department may bill the landowner directly.

(2) An owner who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) fourteen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) fourteen dollars, (ii) twenty-two cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

(4) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forest lands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the

land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments shall not be a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and shall be subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it, shall be liable for the costs of suppression incurred by the department or its agent and shall not be entitled to reimbursement of costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [1993 c 36 § 1; 1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

Effective date—1993 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 15, 1993]." [1993 c 36 § 3.]

76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account. Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in

the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate of interest as determined by the state treasurer. [1986 c 100 § 36.]

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments. There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner

operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and an appeal shall be in accordance with RCW 34.05.510 through 34.05.598. [1993 c 36 § 2; 1991 sp.s. c 13 § 31. Prior: 1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

Effective date—1993 c 36: See note following RCW 76.04.610.

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

Effective date—1989 c 175: See note following RCW 34.05.010.

HAZARD ABATEMENT

76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land. Everyone clearing land or clearing right of way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right of way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No person clearing any land or right of way, or in cutting or logging timber for any purpose, may fell, or permit to be felled, any trees so that they may fall onto land owned by another without first obtaining permission from the owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right of way or other land on behalf of the state itself or any county thereof, either directly or by contract, and, unless unavoidable emergency prevents, provision shall be made by all officials directing the work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1986 c 100 § 38.]

76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs. (1) The owner of land which is an additional fire hazard and the person responsible for the existence of an additional fire hazard shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

(3) The department may adopt rules, after consultation with the forest fire advisory board, defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(4) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(5) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW 76.04.650 refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(6) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(7) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW 76.04.650 exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence. [1986 c 100 § 39.]

FIRE REGULATION

76.04.700 Failure to extinguish campfire. It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire. [1986 c 100 § 40.]

76.04.710 Wilful setting of fire. It is unlawful for any person to wilfully start a fire, whether on his or her land or the land of another, whereby forest lands or the property of another is endangered, under circumstances not amounting to arson in either the first or second degree or reckless burning in either the first or second degree. [1986 c 100 § 41.]

76.04.720 Removal of notices. It is unlawful for any person to wilfully and without authorization deface or remove any warning notice posted under the requirements of this chapter. [1986 c 100 § 42.]

76.04.730 Negligent fire—Spread. It is unlawful for any person to negligently allow fire originating on the person's own property to spread to the property of another. [1986 c 100 § 43.]

76.04.740 Reckless burning. (1) It is unlawful to knowingly cause a fire or explosion and thereby place forest lands in danger of destruction or damage.

(2) This section does not apply to acts amounting to reckless burning in the first degree under RCW 9A.48.040.

(3) Terms used in this section shall have the meanings given to them in Title 9A RCW.

(4) A violation of this section shall be punished as a gross misdemeanor under RCW 9A.20.021. [1986 c 100 § 44.]

76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs. Any fire on or threatening any forest land burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of the fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of the fire, notwithstanding the origin or subsequent spread thereof on his or her own or other forest lands, and the landowner, shall make every reasonable effort to suppress the fire. If the person has not suppressed the fire and the fire is on or threatening forest land within a forest protection zone, the department shall summarily suppress the fire. If the owner, lessee, other possessor of such land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the fire, has not made a reasonable effort to suppress the fire, the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW 76.04.475, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right of way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the fire fighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a fire fighting crew or fire patrol until authority has been granted in writing by the department. [1988 c 273 § 4; 1986 c 100 § 45.]

76.04.900 Captions—1986 c 100. As used in this act subchapter and section captions constitute no part of the law. [1986 c 100 § 60.]

Chapter 76.06

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.010	Forest insects and tree diseases are public nuisance.
76.06.020	Definitions.
76.06.030	Administration.
76.06.040	Owner must control pests and diseases.
76.06.050	Infestation control district—Creation—Notice to owners.
76.06.060	Department to control pests and diseases if owner fails.
76.06.070	Lien for costs of control—Collection.
76.06.080	Owner complying with notice is exempt.
76.06.090	Dissolution of infestation control district.
76.06.110	Deposit of moneys in general fund—Allotment as unanticipated receipts.

76.06.010 Forest insects and tree diseases are public nuisance. Forest insects and forest tree diseases which threaten the permanent timber production of the forest areas of the state of Washington are hereby declared to be a public nuisance. [1951 c 233 § 1.]

76.06.020 Definitions. As used in this chapter: "Department" means the department of natural resources;

"Owner" means and includes individuals, partnerships, corporations and associations;

"Agent" means the recognized legal representative, representatives, agent or agents for any owner;

"Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration. [1988 c 128 § 15; 1951 c 233 § 2.]

76.06.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 16; 1951 c 233 § 3.]

76.06.040 Owner must control pests and diseases. Every owner of timber lands, or his agent, shall make every reasonable effort to control, destroy and eradicate such forest insect pests and forest tree diseases which threaten the existence of any stand of timber or provide for the same to be done on timber lands owned by him or under his control. In the event he fails, neglects, or is unable to accomplish such control, the action may be performed as provided for in this chapter. [1951 c 233 § 4.]

76.06.050 Infestation control district—Creation—Notice to owners. Whenever the department finds timber lands threatened by infestations of forest insects or forest tree diseases, and if it finds that such infestation is of such character as to threaten destruction of timber stands, the department shall declare and certify an infestation control district and fix and declare the boundaries thereof, so as to

definitely describe such district. Said district may include timber lands threatened by the infestation as well as those timber lands already infested.

Thereafter the department shall at once serve written notice to all owners of timber lands or their agents within the said district to proceed under the provisions of this chapter without delay to control, destroy and eradicate the said forest insect pests or forest tree diseases as provided herein. The said notice may be made by personal service, or by mail addressed to the last known place or address of such owner or agent. Said notice shall list and describe the method or methods of action that will be acceptable to the department if the owner or agent elects to control, destroy and eradicate said insects or diseases on his own property.

Said notice when published for five consecutive days in at least one daily newspaper or in two consecutive issues of a weekly newspaper, either paper having a general circulation in said district will serve as the written notice to owners of noncommercial timber lands. [1988 c 128 § 17; 1961 c 72 § 1; 1951 c 233 § 5.]

76.06.060 Department to control pests and diseases if owner fails. If the owner or agent so notified shall fail, refuse, neglect or is unable to comply with the requirements of said notice, within a period of thirty days after the date thereof, it shall be the duty of the department or its agents, using such funds as have been, or hereafter may be, made available to proceed with the control, eradication and destruction of such forest pests or forest tree diseases with or without the cooperation of the owner involved in a manner approved by the department. [1988 c 128 § 18; 1951 c 233 § 6.]

76.06.070 Lien for costs of control—Collection. Upon the completion of the work directed, authorized and performed under the provisions of this chapter, the department shall prepare a verified statement of the expenses necessarily incurred in performing the work of controlling, eradicating and destroying said forest insects or forest tree diseases. The balance of such expenses after deducting such amounts as may be contributed to the control costs by the state, by the federal government, or by any other agencies, companies, corporations or individuals, shall be a lien to be prorated per acre upon the property, or properties involved: PROVIDED, That the amount of said lien shall not exceed twenty-five percent of the total costs incurred on such owner's lands including necessary buffer strips. Said lien shall be reported by the department to the county assessor of the county in which said lands are situated, and shall be levied and collected with the next taxes on such lands in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state: PROVIDED FURTHER, Such report and levy shall be made only on commercial timber lands. The assessor shall extend the amounts on the assessment roll in a separate column, and the procedure provided by law for the collection of taxes and delinquent taxes shall be applicable thereto, and, upon the collection thereof, the county treasurer shall repay the same to the department to be applied to the expenses incurred in carrying out the provisions of this chapter. [1988 c 128 § 19; 1951 c 233 § 7.]

76.06.080 Owner complying with notice is exempt. Every owner, and all owners or representatives, who upon receiving notice as provided in RCW 76.06.050, shall proceed and continue in good faith to control, eradicate and destroy said forest insects and forest tree diseases in accordance with standards established by the department shall be exempt from the provisions hereof as to the lands upon which he or they are so proceeding. [1988 c 128 § 20; 1951 c 233 § 11.]

76.06.090 Dissolution of infestation control district. Whenever the department shall determine that insect control work within the designated district of infestation is no longer necessary or feasible, the department may dissolve said district. [1988 c 128 § 21; 1951 c 233 § 12.]

76.06.110 Deposit of moneys in general fund—Allotment as unanticipated receipts. All moneys collected under the provisions of RCW 76.06.070, together with such moneys as may be contributed by the federal government or by any owner or agent, shall be deposited in the state general fund for the purposes of this chapter.

Any additional revenue earmarked for the purposes of this chapter which was not anticipated in the budget adopted by the legislature may be deposited in the general fund and allotted as unanticipated receipts pursuant to RCW 43.79.270 through 43.79.282 as now existing or hereafter amended. [1979 ex.s. c 67 § 12; 1951 c 233 § 9.]

Effective date—1979 ex.s. c 67: "Sections 12, 13, and 19 of this 1979 act shall take effect on July 1, 1981." [1979 ex.s. c 67 § 21.] This annotation applies to the amendments to RCW 76.06.110 and 76.40.030 and to the repeal of RCW 76.06.100, 76.06.120, 76.40.015, 76.40.016, 76.42.040, and 76.42.050 by 1979 ex.s. c 67.

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

Chapter 76.09 FOREST PRACTICES

Sections

- 76.09.010 Legislative finding and declaration.
- 76.09.020 Definitions.
- 76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff.
- 76.09.040 Forest practices regulations—Promulgation—Review of proposed regulations—Hearings—Adoption.
- 76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
- 76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—New applications—Approval—Emergencies.
- 76.09.065 Application for forest practices—Fee.
- 76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer.
- 76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals.
- 76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions.
- 76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition.
- 76.09.110 Final orders or final decisions binding upon all parties.
- 76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien.

- 76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs.
- 76.09.140 Enforcement.
- 76.09.150 Inspection—Right of entry.
- 76.09.160 Right of entry by department of ecology.
- 76.09.170 Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien.
- 76.09.180 Disposition of moneys received as penalties, reimbursement for damages.
- 76.09.190 Additional penalty, gross misdemeanor.
- 76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal.
- 76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review.
- 76.09.230 Forest practices appeals board—Mediation—Appeal procedure—Judicial review.
- 76.09.240 Restrictions upon local political subdivisions or regional entities—Exceptions and limitations.
- 76.09.250 Policy for continuing program of orientation and training.
- 76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts.
- 76.09.270 Annual determination of state's research needs—Recommendations.
- 76.09.280 Removal of log and debris jams from streams.
- 76.09.285 Water quality standards affected by forest practices.
- 76.09.290 Inspection of lands—Reforestation.
- 76.09.300 Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans.
- 76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses.
- 76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal.
- 76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability.
- 76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations.
- 76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing.
- 76.09.340 Certain forest practices exempt from rules and policies under this chapter.
- 76.09.900 Short title.
- 76.09.905 Air pollution laws not modified.
- 76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions.
- 76.09.915 Repeal and savings.
- 76.09.920 Application for extension of prior permits.
- 76.09.925 Effective dates—1974 ex.s. c 137.
- 76.09.935 Severability—1974 ex.s. c 137.

Chapter 76.09 RCW to be used to satisfy federal water pollution act requirements: RCW 90.48.425.

76.09.010 Legislative finding and declaration. (1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-

wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such regulation;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations; and

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.

(4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practice permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources. [1993 c 443 § 1; 1987 c 95 § 1; 1974 ex.s. c 137 § 1.]

Effective date—1993 c 443: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 443 § 6.]

76.09.020 Definitions. For purposes of this chapter:

(1) "Appeals board" shall mean the forest practices appeals board created by RCW 76.09.210.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Contiguous" shall mean land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(4) "Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices regulations.

(5) "Department" shall mean the department of natural resources.

(6) "Forest land" shall mean all land which is capable of supporting a merchantable stand of timber and is not

being actively used for a use which is incompatible with timber growing.

(7) "Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: PROVIDED, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(8) "Forest practice" shall mean any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(9) "Forest practices regulations" shall mean any rules promulgated pursuant to RCW 76.09.040.

(10) "Application" shall mean the application required pursuant to RCW 76.09.050.

(11) "Operator" shall mean any person engaging in forest practices except an employee with wages as his sole compensation.

(12) "Person" shall mean any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(13) "Public resources" shall mean water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(14) "Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

(15) "Timber owner" shall mean any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(16) "Board" shall mean the forest practices board created in RCW 76.09.030. [1974 ex.s. c 137 § 2.]

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of community, trade, and economic development or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official; and

(f) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.

(3) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [1995 c 399 § 207; 1993 c 257 § 1; 1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

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.

76.09.040 Forest practices regulations—Promulgation—Review of proposed regulations—Hearings—Adoption. (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(a) Establish minimum standards for forest practices;

(b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(c) Set forth necessary administrative provisions; and

(d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter.

Forest practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices regulations. In addition to any forest practices regulations relating to water quality protection proposed by the board, the department of ecology shall prepare proposed forest practices regulations relating to water quality protection.

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices regulations, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter. [1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

Effective date—1993 c 443: See note following RCW 76.09.010.

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource that may be conducted without submitting an application or a notification;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the

work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, or being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 75.20.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030; or

(d) Excluded from Class II by the board;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, (b) on lands being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, and/or (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) No Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended: PROVIDED, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest practices regulations necessary for the scheduled implementation of

this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) If a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) If the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) The department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960; or

(ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on

local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) In addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) Appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) The department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) A county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department. [1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Effective date—1993 c 443: See note following RCW 76.09.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—New applications—Approval—Emergencies. (1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.17 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in

and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a class II forest practice shall indicate whether any land covered by the application or notification will be converted or is intended to be converted to a use other than commercial timber production within three years after completion of the forest practices described in it.

(a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070 as now or hereafter amended;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.

(b) If the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities may deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial timber operations within three years after completion of the forest practices without the consent of the county, city, or town

shall constitute a violation of each of the county, municipal, city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application or notification shall be either signed by the landowner or accompanied by a statement signed by the landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) The notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice. [1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

Effective date—1993 c 443: See note following RCW 76.09.010.

Effective date—1992 c 52 § 22: "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.065 Application for forest practices—Fee. (1) Effective July 1, 1993, an applicant shall pay a fee at the time an application or notification is submitted pursuant to RCW 76.09.060. All money collected from the fees under this section shall be deposited in the state general fund. The fee shall be fifty dollars for class II, III, and IV forest

practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development.

(2) An application fee under subsection (1) of this section shall be refunded or credited to the applicant if either the application is disapproved by the department or the application is withdrawn by the applicant due to restrictions imposed by the department. [1993 c 443 § 5.]

Effective date—1993 c 443: See note following RCW 76.09.010.

76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer. After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: PROVIDED, That: (1) A longer period may be authorized if seed or seedlings are not available; (2) a period of up to five years may be allowed where a natural regeneration plan is approved by the department; and (3) the department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation, the seller shall notify the buyer of the existence and nature of the obligation and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights. If the seller fails to notify the buyer about the reforestation obligation, the seller shall pay the buyer's costs related to reforestation, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation, that the seller did not notify the buyer of the reforestation obligation prior to sale.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likeli-

hood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: PROVIDED, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [1987 c 95 § 10; 1982 c 173 § 1; 1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

Effective date—1982 c 173: "This act shall take effect July 1, 1982." [1982 c 173 § 2.]

76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals. (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or
(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [1989 c 175 § 163; 1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work

order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1)(a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has

not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources. [1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

76.09.110 Final orders or final decisions binding upon all parties. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 ex.s. c 137 § 11.]

76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 ex.s. c 137 § 12.]

76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 ex.s. c 137 § 13.]

76.09.140 Enforcement. (1) The department of natural resources may take any necessary action to enforce any final order or final decision, and may disapprove for up to one year any forest practices application or notification submitted by any person who has failed to comply with a final order or final decision or has failed to pay any civil penalties as provided in RCW 76.09.170. For purposes of chapter 482, Laws of 1993, the terms "final order" and "final decision" shall mean the same as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall provide written notice of its intent to disapprove an application or notification under this subsection. The department shall forward copies of its notice of intent to disapprove to any affected landowner. The disapproval period shall run from thirty days following the date of actual notice or when all administrative and judicial appellate processes, if any, have been exhausted. Any person provided the notice may seek review from the appeals board by filing a request for review within thirty days of the date of the notice of intent.

(2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to, seeking penalties, enforcing final orders or decisions, and seeking civil injunctions, show cause orders, or contempt orders.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest land owner, timber owner or operator to enforce the forest practice regulations or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board. [1993 c 482 § 1; 1975 1st ex.s. c 200 § 8; 1974 ex.s. c 137 § 14.]

76.09.150 Inspection—Right of entry. The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this chapter and the forest practice regulations and to insure that no material damage occurs to the natural resources of this state as a result of such practices.

Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices regulations. [1974 ex.s. c 137 § 15.]

76.09.160 Right of entry by department of ecology. Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and RCW 90.48.420. [1974 ex.s. c 137 § 16.]

76.09.170 Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—

Appeals—Lien. (1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty in this section. No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his or her duties in the administration of this chapter or of any rule adopted under this chapter.

(2) The department shall develop and recommend to the board a penalty schedule to determine the amount to be imposed under this section. The board shall adopt by rule, pursuant to chapter 34.05 RCW, such penalty schedule to be effective no later than January 1, 1994. The schedule shall be developed in consideration of the following:

- (a) Previous violation history;
 - (b) Severity of the impact on public resources;
 - (c) Whether the violation of this chapter or its rules was intentional;
 - (d) Cooperation with the department;
 - (e) Repairability of the adverse effect from the violation; and
- (f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and has not received substantial economic benefits from the violation.

(3) The penalty 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 describing the violation with reasonable particularity. 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 such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rule as it may deem proper.

(4) Any person incurring a penalty under this section may appeal the penalty to the forest practices appeals board. 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 such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.

(5) The 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 such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

(6) 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 department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which 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. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties.

(7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1993 c 482 § 2; 1975 1st ex.s. c 200 § 9; 1974 ex.s. c 137 § 17.]

Effective date—1993 c 482 § 2(1) and (3) through (7): "The following portions of this act shall take effect on January 1, 1994: Subsections (1) and (3) through (7) of section 2 of this act." [1993 c 482 § 3.]

76.09.180 Disposition of moneys received as penalties, reimbursement for damages. All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of fish and wildlife, the department of ecology, the department of natural resources, or any other department that may be so designated: PROVIDED, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1994 c 264 § 50; 1988 c 36 § 48; 1974 ex.s. c 137 § 18.]

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or

90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [1974 ex.s. c 137 § 19.]

76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal.

(1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the forest practices appeals board of the state of Washington.

(2) The forest practices appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve 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 such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member 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 by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) 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, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter. [1979 ex.s. c 47 § 4; 1974 ex.s. c 137 § 21.]

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review.

(1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be

determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.240: PROVIDED, That such compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals 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 or reelect a chairman.

(3) The principal office of the appeals 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 appeals 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 appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals 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 and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals 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.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals 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 appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his request with the department and the attorney general. The attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [1989 c 175 § 164; 1984 c 287 § 109; 1979 ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

76.09.230 Forest practices appeals board—Mediation—Appeal procedure—Judicial review. (1) In all appeals over which the appeals board has jurisdiction, upon request of one or more parties and with the consent of all parties, the appeals board shall promptly schedule a conference for the purpose of attempting to mediate the case. The mediation conference shall be held prior to the hearing on not less than seven days' advance written notice to all parties. All other proceedings pertaining to the appeal shall be stayed until completion of mediation, which shall continue so long as all parties consent: PROVIDED, That this shall not prevent the appeals board from deciding motions filed by the parties while mediation is ongoing: PROVIDED, FURTHER, That discovery may be conducted while mediation is ongoing if agreed to by all parties. Mediation shall be conducted by an administrative appeals judge or other duly authorized agent of the appeals board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the appeals board. A person who mediates in a particular appeal shall not participate in a hearing on that appeal or in writing the decision and order in the appeal. Documentary and other physical evidence presented and evidence of conduct or statements made during the course of mediation shall be treated by the mediator and the parties in a confidential manner and shall not be admissible in subsequent proceedings in the appeal except in accordance with the provisions of the Washington rules of evidence pertaining to compromise negotiations.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(3) In all appeals the appeals 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 34.05 RCW relating to adjudicative proceedings.

(4) All proceedings before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1994 c 253 § 9; 1992 c 52 § 23; 1989 c 175 § 165; 1974 ex.s. c 137 § 23.]

Effective date—1989 c 175: See note following RCW 34.05.010.

76.09.240 Restrictions upon local political subdivisions or regional entities—Exceptions and limitations. No county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(1) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (a) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands will be converted to a use other than commercial timber production; or (b) on lands which have been platted after January 1, 1960: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(2) Taxing powers;

(3) Regulatory authority with respect to public health; and

(4) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971", except that in relation to "shorelines" as defined in RCW 90.58.030, the following shall apply:

(a) The forest practice regulations adopted pursuant to this chapter shall be the sole rules applicable to the performance of forest practices, and enforcement thereof shall be solely as provided in chapter 76.09 RCW;

(b) As to that road construction which constitutes a substantial development, no permit shall be required under chapter 90.58 RCW for the construction of up to five hundred feet of one and only one road or segment of a road provided such road does not enter the shoreline more than once. Such exemption from said permit requirements shall be limited to a single road or road segment for each forest practice and such road construction shall be subject to the requirements of chapter 76.09 RCW and regulations adopted pursuant thereto and to the prohibitions or restrictions of any master program in effect under the provisions of chapter 90.58 RCW. Nothing in this subsection shall add to or diminish the authority of the shoreline management act regarding road construction except as specifically provided herein. The provisions of this subsection shall not relate to any road which crosses over or through a stream, lake, or other water body subject to chapter 90.58 RCW;

(c) Nothing in this section shall create, add to, or diminish the authority of local government to prohibit or restrict forest practices within the shorelines through master programs adopted and approved pursuant to chapter 90.58 RCW except as provided in (a) and (b) above.

Any powers granted by chapter 90.58 RCW pertaining to forest practices, as amended herein, are expressly limited to lands located within "shorelines of the state" as defined in RCW 90.58.030. [1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

76.09.250 Policy for continuing program of orientation and training. The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 ex.s. c 137 § 25.]

76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts. The department shall represent the state's interest in

matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 ex.s. c 137 § 26.]

76.09.270 Annual determination of state's research needs—Recommendations. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 ex.s. c 137 § 27.]

76.09.280 Removal of log and debris jams from streams. Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies. [1974 ex.s. c 137 § 28.]

76.09.285 Water quality standards affected by forest practices. See RCW 90.48.420.

76.09.290 Inspection of lands—Reforestation. The department shall inspect, or cause to be inspected, deforested lands of the state and ascertain if the lands are valuable chiefly for agriculture, timber growing, or other purposes, with a view to reforestation. [1986 c 100 § 49.]

76.09.300 Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans. (1) Mass earth movements and fluvial processes can endanger public resources and public safety. In some cases, action can be taken which has a probability of reducing the danger to public resources and public safety. In other cases it may be best to take no action. In order to determine where and what, if any, actions should be taken on forest lands, the department shall develop a program to correct hazardous conditions on identified sites associated with roads and railroad grades constructed on private and public forest lands prior to January 1, 1987. The first priority treatment shall be accorded to those roads and railroad grades constructed before the effective date of the forest practices act of 1974.

(2) This program shall be designed to accomplish the purposes and policies set forth in RCW 76.09.010. For each

geographic area studied, the department shall produce a hazard-reduction plan which shall consist of the following elements:

(a) Identification of sites where the department determines that earth movements or fluvial processes pose a significant danger to public resources or public safety: PROVIDED, That no liability shall attach to the state of Washington or the department for failure to identify such sites;

(b) Recommendations for the implementation of any appropriate hazard-reduction measures on the identified sites, which minimize interference with natural processes and disturbance to the environment;

(c) Analysis of the costs and benefits of each of the hazard-reduction alternatives, including a no-action alternative.

(3) In developing these plans, it is intended that the department utilize appropriate scientific expertise including a geomorphologist, a forest hydrologist, and a forest engineer.

(4) In developing these plans, the department shall consult with affected tribes, landowners, governmental agencies, and interested parties.

(5) Unless requested by a forest landowner under RCW 76.09.320, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under RCW 76.09.320. [1987 c 95 § 2.]

76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses. The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in RCW 76.09.300(2).

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1987 c 95 § 3.]

76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal. (1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.

(3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.

(4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

(5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

(6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the forest practices appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the forest practices appeals board and to the department.

(7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county. [1987 c 95 § 4.]

76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability. (1) When a forest landowner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forest landowner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly transmit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.

(2) Forest landowners, public and private, of hazard-reduction sites reviewed by the department and who have complied with the department's recommendations for sites which require action shall not be liable for any personal injuries or property damage, occurring on or off the property reviewed; arising from mass earth movements or fluvial processes associated with the hazard-reduction site reviewed. The limitation on liability contained in this subsection shall also cover personal injuries or property damage arising from mass earth movements or fluvial processes which are

associated with those areas disturbed by activities required to acquire site access and to execute the plan when such activities are approved as part of a hazard-reduction plan. Notwithstanding the foregoing provisions of this subsection, a landowner may be liable when the landowner had actual knowledge of a dangerous artificial latent condition on the property that was not disclosed to the department.

(3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures. [1987 c 95 § 5.]

76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations. (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

(2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one hundred percent of the cost of implementation of the department's recommended actions on his property.

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule. [1987 c 95 § 6.]

76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing. The legislature hereby finds and declares that riparian ecosystems on forest lands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forest landowners may be required to leave trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. The landowner shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, and other damages resulting from the trees being left. [1992 c 52 § 5; 1987 c 95 § 7.]

76.09.340 Certain forest practices exempt from rules and policies under this chapter. Forest practices consistent with a habitat conservation plan approved prior to March 25, 1996, by the secretary of the interior or commerce under 16 U.S.C. Sec. 1531 et seq., and the endangered species act of 1973 as amended, are exempt from rules and policies under this chapter, provided the proposed forest practices indicated in the application are in compliance with

the plan, and provided this exemption applies only to rules and policies adopted primarily for the protection of one or more species, including unlisted species, covered by the plan. Such forest practices are deemed not to have the potential for a substantial impact on the environment but may be found to have the potential for a substantial impact on the environment due to other reasons under RCW 76.09.050.

Nothing in this section is intended to limit the board's rule-making authority under this chapter. [1996 c 136 § 1.]

Effective date—1996 c 136: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 136 § 2.]

76.09.900 Short title. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 ex.s. c 137 § 29.]

76.09.905 Air pollution laws not modified. Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 ex.s. c 137 § 31.]

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (RCW 75.20.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

76.09.915 Repeal and savings. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1953 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 ex.s. c 137 § 34.]

76.09.920 Application for extension of prior permits. Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 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. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 ex.s. c 137 § 37.]

76.09.935 Severability—1974 ex.s. c 137. 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 provisions to other persons or circumstances shall not be affected. [1974 ex.s. c 137 § 36.]

Chapter 76.10 SURFACE MINING

Reviser's note: Chapter 64, Laws of 1970 ex. sess. has been codified as chapter 78.44 RCW, "Mines, minerals, and petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

Chapter 76.12 REFORESTATION

Sections	
76.12.015	"Department" defined.
76.12.020	Powers of department—Acquisition of land for reforestation—Taxes, cancellation.
76.12.030	Deed of county land to department—Disposition of proceeds.
76.12.035	Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements.
76.12.040	Gifts of county or city land for offices, warehouses, etc.

- 76.12.045 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized.
- 76.12.050 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential.
- 76.12.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner.
- 76.12.065 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged.
- 76.12.067 Reconveyance to county of certain leased lands.
- 76.12.070 Reconveyance to county in certain cases.
- 76.12.072 Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases.
- 76.12.073 Transfer of state forest lands back to county for public park use—Timber resource management.
- 76.12.074 Transfer of state forest lands back to county for public park use—Lands transferred by deed.
- 76.12.075 Transfer of state forest lands back to county for public park use—Provisions cumulative and nonexclusive.
- 76.12.080 Acquisition of forest land—Requisites.
- 76.12.090 Utility bonds.
- 76.12.100 Bonds—Purchase price of land limited—Retirement of bonds.
- 76.12.110 Forest development account.
- 76.12.120 Sales and leases of timber, timber land, or products thereon—Disposition of revenue.
- 76.12.140 Logging of land—Rules and regulations—Penalty.
- 76.12.155 Record of proceedings, etc.
- 76.12.160 Sale or exchange of tree seedling stock and tree seed—Provision of stock or seed to local governments or non-profit organizations.
- 76.12.170 Use of proceeds specified.
- 76.12.180 Department-county agreements for improvement of access roads.
- 76.12.200 Reserved timber—Report to legislature.
- 76.12.205 Olympic natural resources center—Finding, intent.
- 76.12.210 Olympic natural resources center—Purpose, programs.
- 76.12.220 Olympic natural resources center—Administration.
- 76.12.230 Olympic natural resources center—Funding—Contracts.
- 76.12.240 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue.

Reservation of state land for reforestation after timber removed: RCW 79.01.164.

76.12.015 "Department" defined. As used in this chapter, "department" means the department of natural resources. [1988 c 128 § 22.]

76.12.020 Powers of department—Acquisition of land for reforestation—Taxes, cancellation. The department shall have the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forest lands; and may acquire by gift or purchase any lands of the same character. The department shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as state forest lands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which said land is located such gift or donation of land may be accepted

subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the department shall record the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of his office. Thereafter, such lands shall be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 76.12.030. [1988 c 128 § 23; 1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part.]

76.12.030 Deed of county land to department—Disposition of proceeds. If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 76.12.020 and can be used as state forest land and if the department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the department, deed such land to the department and the land shall become a part of the state forest lands.

Such land shall be held in trust and administered and protected by the department as other state forest lands. Any moneys derived from the lease of such land or from the sale of forest products, oils, gases, coal, minerals, or fossils therefrom, shall be distributed as follows:

(1) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board of natural resources, shall be returned to the forest development account in the state general fund.

(2) Any balance remaining shall be paid to the county in which the land is located to be paid, distributed, and prorated, except as hereinafter provided, to the various funds in the same manner as general taxes are paid and distributed during the year of payment: PROVIDED, That any such balance remaining paid to a county with a population of less than nine thousand shall first be applied to the reduction of any indebtedness existing in the current expense fund of such county during the year of payment. [1991 c 363 § 151; 1988 c 128 § 24; 1981 2nd ex.s. c 4 § 4; 1971 ex.s. c 224 § 1; 1969 c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

76.12.035 Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements. Whenever any forest land which shall have been acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the state board of natural resources and the board of county commissioners of any such county are hereby authorized to enter into an agreement for the reacqui-

sition of such lands as state forest lands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The state board of natural resources is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as in said agreement provided, solely from any distribution to be made to said county under the provisions of RCW 76.12.030; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forest lands shall be retained by the state to be administered and/or disposed of in the same manner as other state forest lands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [1959 c 87 § 1.]

76.12.040 Gifts of county or city land for offices, warehouses, etc. Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the department and the department is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the department as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: PROVIDED, HOWEVER, No consideration shall be paid by the state nor by the department for the conveyance of such lands by such county, city or town. [1988 c 128 § 25; 1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045.]

76.12.045 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized. The department is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1988 c 128 § 26; 1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.040.]

76.12.050 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential. The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board of natural resources shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and land owned

by the state under the jurisdiction of the department of natural resources, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential. [1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e.]

76.12.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner. 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 complete an exchange as authorized by the board of natural resources under RCW 76.12.050. [1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f.]

76.12.065 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged. Lands acquired by the state of Washington as the result of any exchange authorized under RCW 76.12.050 shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [1961 c 77 § 3.]

76.12.067 Reconveyance to county of certain leased lands. If the board of natural resources determines that any forest lands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chairman of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands. [1991 c 10 § 1.]

76.12.070 Reconveyance to county in certain cases. Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 76.12.020 and shall have thereafter contracted to sell such lands to bona fide purchasers before the same may have been selected as forest lands by the department, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the department to be held under RCW 76.12.030 or any amendment thereof; the department upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey

such lands to such county by quitclaim deed executed by the department. Such reconveyance of lands hereafter so acquired shall be made within one year from the conveyance thereof to the state or department. [1988 c 128 § 27; 1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g.]

76.12.072 Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases. Whenever the board of county commissioners of any county shall determine that forest lands, that were acquired from such county by the state pursuant to RCW 76.12.030 and that are under the administration of the department of natural resources, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board of natural resources for the transfer of such forest lands.

Upon the filing of an application by the board of county commissioners, the department of natural resources shall cause notice of the impending transfer to be given in the manner provided by RCW 42.30.060. If the department of natural resources determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said forest lands to the requesting county to have and to hold for so long as the forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department of natural resources to coordinate the management of any adjacent state owned lands with the proposed park activity to encourage maximum multiple use management and may reserve rights of way needed to manage other state owned lands in the area. The application shall be denied if the department of natural resources finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department of natural resources upon request of the department. [1983 c 3 § 195; 1969 ex.s. c 47 § 1.]

76.12.073 Transfer of state forest lands back to county for public park use—Timber resource management. The timber resources on any such state forest land transferred to the counties under RCW 76.12.072 shall be managed by the department of natural resources to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department of natural resources does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forest lands. [1969 ex.s. c 47 § 2.]

76.12.074 Transfer of state forest lands back to county for public park use—Lands transferred by deed. Under provisions mutually agreeable to the board of county commissioners and the board of natural resources, lands approved for transfer to a county for public park purposes under the provisions of RCW 76.12.072 shall be transferred to the county by deed. [1969 ex.s. c 47 § 3.]

76.12.075 Transfer of state forest lands back to county for public park use—Provisions cumulative and

nonexclusive. The provisions of RCW 76.12.072 through 76.12.075 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [1969 ex.s. c 47 § 4.]

76.12.080 Acquisition of forest land—Requisites. The department shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. No sum in excess of two dollars per acre shall ever be paid or allowed either in cash, bonds or otherwise, for any lands suitable for forest growth, but devoid of such; nor shall any sum in excess of six dollars per acre be paid or allowed either in cash, bonds or otherwise, for any lands adequately restocked with young growth or left in a satisfactory natural condition for natural reforestation and continuous forest production; nor shall any lands ever be acquired by the department except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by the department unless the area so designated or the area to be acquired shall, in the judgment of the department, be of sufficient acreage and so located that it can be economically administered for forest development purposes. Whenever the department acquires or designates an area as forest lands it shall designate such area by a distinctive name or number, e.g., "State forest No. . . .", or, "Cascade State Forest". [1988 c 128 § 28; 1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part.]

76.12.090 Utility bonds. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the department may issue utility bonds of the state of Washington, in an amount not to exceed two hundred thousand dollars in principal, during the biennium expiring March 31, 1925, and such other amounts as may hereafter be authorized by the legislature. Said bonds shall bear interest at not to exceed the rate of two percent per annum which shall be payable annually. Said bonds shall never be sold or exchanged at less than par and accrued interest, if any, and shall mature in not less than a period equal to the time necessary to develop a merchantable forest on the lands exchanged for said bonds or purchased with money derived from the sale thereof. Said bonds shall be known as state forest utility bonds. The principal or interest of said bonds shall not be a general obligation of the state, but shall be payable only from the forest development account. The department may issue said bonds in exchange for lands selected by it in accordance with RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and *76.12.150, or may sell said bonds in such manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of said bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay said bonds and interest thereon according to their terms, the lien of said bonds may be foreclosed by appropriate court action. [1988 c 128 § 29; 1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5.]

*Reviser's note: RCW 76.12.150 was repealed by 1977 c 75 § 96.

76.12.100 Bonds—Purchase price of land limited—Retirement of bonds. For the purpose of acquiring, seeding, reforestation and administering land for forests and of carrying out RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and *76.12.150, the department is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951: PROVIDED, HOWEVER, That no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development account, said bonds to be retired at the discretion of the department either in the order of issuance, or by first retiring bonds with the highest rate of interest. [1988 c 128 § 30; 1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11.]

*Reviser's note: RCW 76.12.150 was repealed by 1977 c 75 § 96.

76.12.110 Forest development account. There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the account shall be pledged for the purpose of paying interest and principal on the bonds issued by the department, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the department.

Appropriations may be made by the legislature from the forest development account to the department for the purpose of carrying on the activities of the department on state forest lands, lands managed on a sustained yield basis as provided for in RCW 79.68.040, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forest lands. [1988 c 128 § 31; 1985 c 57 § 75; 1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6.]

Effective date—1985 c 57: See note following RCW 18.04.105.

76.12.120 Sales and leases of timber, timber land, or products thereon—Disposition of revenue. All land, acquired or designated by the department as state forest land, shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state granted land if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

Except as provided in RCW 79.12.035, all money derived from the sale of timber or other products, or from

lease, or from any other source from the land, except where the Constitution of this state or RCW 76.12.030 requires other disposition, shall be disposed of as follows:

(1) Fifty percent shall be placed in the forest development account.

(2) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 as now or hereafter amended and the levy rate for any maintenance and operation special school levies. The money distributed to the county shall be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment. [1988 c 128 § 32; 1988 c 70 § 1; 1980 c 154 § 11; 1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7.]

Reviser's note: This section was amended by 1988 c 70 § 1 and by 1988 c 128 § 32, 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—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest. Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

76.12.140 Logging of land—Rules and regulations—Penalty. Any lands acquired by the state under RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and *76.12.150, or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW. Any violation of any such rules shall be a gross misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [1988 c 128 § 33; 1987 c 380 § 17; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2.]

*Reviser's note: RCW 76.12.150 was repealed by 1977 c 75 § 96.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

76.12.155 Record of proceedings, etc. The commissioner of public lands shall keep in his office in a permanent bound volume a record of all forest lands acquired by the state and any lands owned by the state and designated as such by the department. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding,

planting, maintenance or care for such lands; the amount, date and source of any income derived from such land; and such other information and data as may be required by the department. [1988 c 128 § 34; 1923 c 154 § 9; RRS § 5812-9. Formerly RCW 43.12.140.]

76.12.160 Sale or exchange of tree seedling stock and tree seed—Provision of stock or seed to local governments or nonprofit organizations. The department is authorized to sell to or exchange with persons intending to restock forest areas, tree seedling stock and tree seed produced at the state nursery.

The department may provide at cost, stock or seed to local governments or nonprofit organizations for urban tree planting programs consistent with the community and urban forestry program. [1993 c 204 § 7; 1988 c 128 § 35; 1947 c 67 § 1; Rem. Supp. 1947 § 5823-40.]

Findings—1993 c 204: See note following RCW 35.92.390.

76.12.170 Use of proceeds specified. All receipts from the sale of stock or seed shall be deposited in a state forest nursery revolving fund to be maintained by the department, which is hereby authorized to use all money in said fund for the maintenance of the state tree nursery or the planting of denuded state owned lands. [1988 c 128 § 36; 1947 c 67 § 2; RRS § 5823-41.]

76.12.180 Department-county agreements for improvement of access roads. The department of natural resources may enter into agreements with the county to:

(1) Identify public roads used to provide access to state forest lands in need of improvement;

(2) Establish a time schedule for the improvements;

(3) Advance payments to the county to fund the road improvements: PROVIDED, That no more than fifty percent of the access road revolving fund shall be eligible for use as advance payments to counties. The department shall assess the fund on January 1 and July 1 of each year to determine the amount that may be used as advance payments to counties for road improvements; and

(4) Determine the equitable distribution, if any, of costs of such improvements between the county and the state through negotiation of terms and conditions of any resulting repayment to the fund or funds financing the improvements. [1981 c 204 § 5.]

76.12.200 Reserved timber—Report to legislature. By December 1, 1990, and annually thereafter until December 1, 1994, the board of natural resources shall report to the appropriate legislative committees on the amount of reserved timber sold pursuant to *RCW 76.12.190. The report shall identify the quantity of the reserved timber which was not exported out-of-state in the form of raw logs, and shall identify the quantity which was processed into final products within the state. The report shall also identify which counties have elected to reserve timber pursuant to this section, and shall identify any rules which have been adopted in the last year for the implementation of this section. [1989 c 424 § 3.]

*Reviser's note: RCW 76.12.190 expired June 30, 1994.

Effective date—1989 c 424: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 424 § 13.]

76.12.205 Olympic natural resources center—Finding, intent. The legislature finds that conflicts over the use of natural resources essential to the state's residents, especially forest and ocean resources, have increased dramatically. There are growing demands that these resources be fully utilized for their commodity values, while simultaneously there are increased demands for protection and preservation of these same resources. While these competing demands are most often viewed as mutually exclusive, recent research has suggested that commodity production and ecological values can be integrated. It is the intent of the legislature to foster and support the research and education necessary to provide sound scientific information on which to base sustainable forest and marine industries, and at the same time sustain the ecological values demanded by much of the public. [1991 c 316 § 1.]

Severability—1991 c 316: "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." [1991 c 316 § 6.]

76.12.210 Olympic natural resources center—Purpose, programs. The Olympic natural resources center is hereby created at the University of Washington in the college of forest resources and the college of ocean and fishery sciences. The center shall maintain facilities and programs in the western portion of the Olympic Peninsula. Its purpose shall be to demonstrate innovative management methods which successfully integrate environmental and economic interests into pragmatic management of forest and ocean resources. The center shall combine research and educational opportunities with experimental forestry, oceans management, and traditional management knowledge into an overall program which demonstrates that management based on sound economic principles is made superior when combined with new methods of management based on ecological principles. The programs developed by the center shall include the following:

(1) Research and education on a broad range of ocean resources problems and opportunities in the region, such as estuarine processes, ocean and coastal management, offshore development, fisheries and shellfish enhancement, and coastal business development, tourism, and recreation. In developing this component of the center's program, the center shall collaborate with coastal educational institutions such as Grays Harbor community college and Peninsula community college;

(2) Research and education on forest resources management issues on the landscape, ecosystem, or regional level, including issues that cross legal and administrative boundaries;

(3) Research and education that broadly integrates marine and terrestrial issues, including interactions of marine, aquatic, and terrestrial ecosystems, and that identifies options and opportunities to integrate the production of commodities with the preservation of ecological values.

Where appropriate, programs shall address issues and opportunities that cross legal and administrative boundaries;

(4) Research and education on natural resources and their social and economic implications, and on alternative economic and social bases for sustainable, healthy, resource-based communities;

(5) Educational opportunities such as workshops, short courses, and continuing education for resource professionals, policy forums, information exchanges including international exchanges where appropriate, conferences, student research, and public education; and

(6) Creation of a neutral forum where parties with diverse interests are encouraged to address and resolve their conflicts. [1991 c 316 § 2; 1989 c 424 § 4.]

Severability—1991 c 316: See note following RCW 76.12.205.

Effective date—1989 c 424: See note following RCW 76.12.200.

76.12.220 Olympic natural resources center—Administration. The Olympic natural resources center shall operate under the authority of the board of regents of the University of Washington. It shall be administered by a director appointed jointly by the deans of the college of forest resources and the college of ocean and fishery sciences. The director shall be a member of the faculty of one of those colleges. The director shall appoint and maintain a scientific or technical committee, and other committees as necessary, to advise the director on the efficiency, effectiveness, and quality of the center's activities.

A policy advisory board consisting of eleven members shall be appointed by the governor to advise the deans and the director on policies for the center that are consistent with the purposes of the center. Membership on the policy advisory board shall broadly represent the various interests concerned with the purposes of the center, including state and federal government, environmental organizations, local community, timber industry, and Indian tribes.

Service on boards and committees of the center shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1991 c 316 § 3.]

Severability—1991 c 316: See note following RCW 76.12.205.

76.12.230 Olympic natural resources center—Funding—Contracts. The center may solicit gifts, grants, conveyances, bequests, and devises, whether real or personal property, or both, in trust or otherwise, to be directed to the center for carrying out the purposes of the center. The center may solicit contracts for work, financial and in-kind contributions, and support from private industries, interest groups, federal and state sources, and other sources. It may also use separately appropriated funds of the University of Washington for the center's activities. [1991 c 316 § 4.]

Severability—1991 c 316: See note following RCW 76.12.205.

76.12.240 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue. (1) The legislature finds that the state's community and technical colleges need a dedicated source of revenue to augment other sources of capital improvement funding. The intent of this section is to

ensure that the forest land purchased under section 310, chapter 16, Laws of 1990 1st ex. sess. and known as the community and technical college forest reserve land base, is managed in perpetuity and in the same manner as state forest lands for sustainable commercial forestry and multiple use of lands consistent with RCW 79.68.050. These state lands will also be managed to provide an outdoor education and experience area for organized groups. The lands will provide a source of revenue for the long-term capital improvement needs of the state community and technical college system.

(2) There has been increasing pressure to convert forest lands within areas of the state subject to population growth. Loss of forest land in urbanizing areas reduces the production of forest products and the available supply of open space, watershed protection, habitat, and recreational opportunities. The land known as the community and technical college forest reserve land base is forever reserved from sale. However, the timber and other products on the land may be sold, or the land may be leased in the same manner and for the same purposes as authorized for state granted lands if the department finds the sale or lease to be in the best interest of this forest reserve land base and approves the terms and conditions of the sale or lease.

(3) The land exchange and acquisition powers provided in RCW 76.12.050 may be used by the department to reposition land within the community and technical college forest reserve land base consistent with subsection (1) of this section.

(4) Up to twenty-five percent of the revenue from these lands, as determined by the board of natural resources, will be deposited in the forest development account to reimburse the forest development account for expenditures from the account for management of these lands.

(5) The community college forest reserve account, created under section 310, chapter 16, Laws of 1990 1st ex. sess., is renamed the community and technical college forest reserve account. The remainder of the revenue from these lands must be deposited in the community and technical college forest reserve account. Money in the account may be appropriated by the legislature for the capital improvement needs of the state community and technical college system or to acquire additional forest reserve lands. [1996 c 264 § 1.]

Chapter 76.13

STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections

76.13.005	Finding.
76.13.007	Purpose.
76.13.010	Definitions.
76.13.020	Authority.
76.13.030	Funding sources—Fees—Contracts.

76.13.005 Finding. The legislature hereby finds and declares that:

(1) Over half of the private forest and woodland acreage in Washington is owned by landowners with less than five thousand acres who are not in the business of industrial handling or processing of timber products.

(2) Nonindustrial forests and woodlands are absorbing more demands and impacts on timber, fish, wildlife, water, recreation, and aesthetic resources, due to population growth and a shrinking commercial forest land base.

(3) Nonindustrial forests and woodlands provide valuable habitat for many of the state's numerous fish, wildlife, and plant species, including some threatened and endangered species, and many habitats can be protected and improved through knowledgeable forest resource stewardship.

(4) Providing for long-term stewardship of nonindustrial forests and woodlands in growth areas and rural areas is an important factor in maintaining Washington's special character and quality of life.

(5) In order to encourage and maintain nonindustrial forests and woodlands for their present and future benefit to all citizens, Washington's nonindustrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington state. [1991 c 27 § 1.]

76.13.007 Purpose. The purpose of this chapter is to:

(1) Promote the coordination and delivery of services with federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries and environmental organizations to nonindustrial forest and woodland owners.

(2) Facilitate the production of forest products, enhancement of wildlife and fisheries, protection of streams and wetlands, culturing of special plants, availability of recreation opportunities and the maintenance of scenic beauty for the enjoyment and benefit of nonindustrial forest and woodland owners and the citizens of Washington by meeting the landowners' stewardship objectives. [1991 c 27 § 2.]

76.13.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

(3) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

(4) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, forests and associated resources for the benefit of the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements.

(5) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote

and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners. [1991 c 27 § 3.]

76.13.020 Authority. In order to accomplish the purposes stated in RCW 76.13.007, the department may:

(1) Establish and maintain a nonindustrial forest and woodland owner assistance program, and through such a program, assist nonindustrial forest and woodland owners in meeting their stewardship objectives.

(2) Provide direct technical assistance through development of management plans, advice, and information to nonindustrial forest land owners to meet their stewardship objectives.

(3) Assist and facilitate efforts of cooperating organizations to provide stewardship education, information, technical assistance, and incentives to nonindustrial forest and woodland owners.

(4) Provide financial assistance to landowners and cooperating organizations.

(5) Appoint a stewardship advisory committee to assist in establishing and operating this program.

(6) Loan or rent surplus equipment to assist cooperating organizations and nonindustrial forest and woodland owners.

(7) Work with local governments to explain the importance of maintaining nonindustrial forests and woodlands.

(8) Take such other steps as are necessary to carry out the purposes of this chapter. [1991 c 27 § 4.]

76.13.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of moneys, labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources according to their terms.

(3) Charge fees for attendance at workshops and conferences, for various publications and other materials which the department may prepare.

(4) Enter into contracts with cooperating organizations having responsibility to carry out programs of similar purposes to this chapter. [1991 c 27 § 5.]

Chapter 76.14

FOREST REHABILITATION

Sections

76.14.010	Definitions.
76.14.020	Yacolt burn designated high hazard area—Rehabilitation required.
76.14.030	Administration.
76.14.040	Duties.
76.14.050	Firebreaks—Powers of department—Grazing lands.
76.14.051	Firebreaks—Preexisting agreements not altered.
76.14.060	Powers and duties—Private lands.
76.14.070	Powers and duties—Expenditure of public funds.
76.14.080	Fire protection projects—Assessments—Payment.

- 76.14.090 Fire protection projects—Notice—Hearing.
 76.14.100 Fire protection projects—Collection of assessments.
 76.14.110 Fire protection projects—Credit on assessment for private expenditure.
 76.14.120 Landowner's responsibility under other laws.
 76.14.130 Lands not to be included in project.

76.14.010 Definitions. As used in this chapter:

"Department" means the department of natural resources;

The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest land owners;

"Forest land" means any lands considered best adapted for the growing of trees. [1988 c 128 § 37; 1953 c 74 § 2.]

76.14.020 Yacolt burn designated high hazard area—Rehabilitation required. The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

76.14.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 38; 1953 c 74 § 3.]

76.14.040 Duties. The department shall use funds placed at its disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities and do all work deemed necessary to protect forest lands from fire in the rehabilitation zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1988 c 128 § 39; 1955 c 171 § 1; 1953 c 74 § 4.]

76.14.050 Firebreaks—Powers of department—Grazing lands. The department is authorized to cooperate with owners of land located in the area described in RCW 76.14.020 in establishing firebreaks in their most logical position regardless of land ownership. The department may by gift, purchase, condemnation or otherwise acquire easements for road rights of way and land or interests therein located in the high hazard forest area described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the department shall have authority to regulate the use thereof. When the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1988 c 128 § 40; 1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

76.14.051 Firebreaks—Preexisting agreements not altered. Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise

alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

76.14.060 Powers and duties—Private lands. The department shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1988 c 128 § 41; 1955 c 171 § 3.]

76.14.070 Powers and duties—Expenditure of public funds. The department shall have authority to expend public money for the purposes and objectives provided in this chapter. [1988 c 128 § 42; 1955 c 171 § 4.]

76.14.080 Fire protection projects—Assessments—Payment. The department shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the department elect to pay his assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [1988 c 128 § 43; 1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per acre and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the department in Olympia and present any reasons why he feels the assessment should not be made upon his land. Thereafter, the department may change the boundaries of said project to eliminate land from the project which it determines in its discretion will not be benefited by the project. [1988 c 128 § 44; 1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the department in writing that he will make payment on the deferred plan, the assessment shall be collected by the department reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the department by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the department. Payment on the deferred plan shall be made directly to the department. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance or portion thereof, he may make direct payment to the department. [1988 c 128 § 45; 1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the department finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the department shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his predecessors in title making the expenditure. Such appraisal shall be added to the cost of the project for purposes of determining the general assessment. [1988 c 128 § 46; 1955 c 171 § 8.]

76.14.120 Landowner's responsibility under other laws. This chapter shall not relieve the landowner of providing adequate fire protection for forest land pursuant to RCW 76.04.610 or, in lieu thereof, of paying the forest fire protection assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1986 c 100 § 56; 1955 c 171 § 9.]

76.14.130 Lands not to be included in project. Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16

mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1 3/4 miles to the west quarter corner of section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 3/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile; south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile; east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west 3/16 mile; south 1/16 mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south

1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; east 1 mile; south 1/2 mile; west 1 mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

Chapter 76.15

COMMUNITY AND URBAN FORESTRY

Sections

76.15.005	Finding.
76.15.007	Purpose.
76.15.010	Definitions.
76.15.020	Authority.
76.15.030	Funding sources—Fees—Contracts.
76.15.040	Primary duty, department's—Cooperation.
76.15.050	Agreements for urban tree planting.
76.15.060	Urban tree planting to be encouraged.

76.15.005 Finding. (1) Trees and other woody vegetation are a necessary and important part of community and urban environments. Community and urban forests have many values and uses including conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) As urban and community areas in Washington state grow, the need to plan for and protect community and urban forests increases. Cities and communities benefit from assistance in developing and maintaining community and urban forestry programs that also address future growth.

(3) Assistance and encouragement in establishment, retention, and enhancement of these forests and trees by local governments, citizens, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's municipalities and counties while providing opportunities for economic development. [1991 c 179 § 1.]

76.15.007 Purpose. The purpose of this chapter is to:

(1) Encourage planting and maintenance and management of trees in the state's municipalities and counties and maximize the potential of tree and vegetative cover in improving the quality of the environment.

(2) Encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs.

(3) Foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector.

(4) Facilitate the creation of employment opportunities related to community and urban forestry activities including opportunities for inner city youth to learn teamwork, re-

source conservation, environmental appreciation, and job skills.

(5) Provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities. [1991 c 179 § 2.]

76.15.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.

(3) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(4) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(5) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state. [1991 c 179 § 3.]

76.15.020 Authority. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint a committee or council to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects. [1991 c 179 § 4.]

76.15.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of labor, material, seedlings, and equipment from public or private sources as may be made

for the purpose of carrying out the provisions of this chapter, and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources.

(3) Charge fees for attendance at workshops and conferences, and for various publications and other materials that the department may prepare.

(4) Enter into agreements and contracts with persons having community and urban forestry-related responsibilities. [1991 c 179 § 5.]

76.15.040 Primary duty, department's—Cooperation. The department shall assume the primary responsibility of carrying out this chapter and shall cooperate with other private and public, state and federal persons, any agency of another state, the United States, any agency of the United States, or any agency or province of Canada. [1991 c 179 § 6.]

76.15.050 Agreements for urban tree planting. The department may enter into agreements with one or more nonprofit organizations whose primary purpose is urban tree planting. The agreements shall be to further public education about and support for urban tree planting, and for obtaining voluntary activities by the local community organizations in tree planting programs. The agreements shall ensure that such programs are consistent with the purposes of the community and urban forestry program under this chapter. [1993 c 204 § 10.]

Findings—1993 c 204: See note following RCW 35.92.390.

76.15.060 Urban tree planting to be encouraged. The department shall encourage urban planting of tree varieties that are site-appropriate and provide the best combination of energy and water conservation, fire safety and other safety, wildlife habitat, and aesthetic value. The department may provide technical assistance in developing programs in tree planting for energy conservation in areas of the state where such programs are most cost-effective. [1993 c 204 § 11.]

Findings—1993 c 204: See note following RCW 35.92.390.

Chapter 76.16

ACCESS TO STATE TIMBER AND OTHER VALUABLE MATERIAL

Sections

- 76.16.010 Acquisition of property interests for access authorized—Maintenance.
- 76.16.020 Condemnation—Duty of attorney general.
- 76.16.030 Disposal of property interests acquired under this chapter.
- 76.16.040 Acquisition—Payment—Moneys available to department.

76.16.010 Acquisition of property interests for access authorized—Maintenance. Whenever the department of natural resources, hereinafter referred to as the department, shall find it to be for the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for or selling the same, the acquisition of such property, or

use thereof, is hereby declared to be necessary for the public use of the state of Washington, and said department is hereby authorized to acquire such property or the use of such roads by gift, purchase, exchange or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange or decree of condemnation to maintain such property or roads as part of the department's land management road system. [1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823-30.]

Eminent domain: State Constitution Art. 1 § 16; chapter 8.04 RCW.

State lands subject to easements for removal of materials: RCW 79.01.312 and 79.36.230.

76.16.020 Condemnation—Duty of attorney general. The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 76.16.010, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 76.16.010, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823-31.]

76.16.030 Disposal of property interests acquired under this chapter. In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are public lands of the state:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, said acquired property interests may be sold or exchanged as an appurtenance of said state property when it is determined by the department that sale or exchange of said state property and acquired property interests as one parcel is in the best interests of the state.

(2) If said acquired property interests are not sold or exchanged as provided in the preceding subsection, the department shall notify the person or persons from whom the

property interest was acquired, stating that said property interests are to be sold, and that said person or persons shall have the right to purchase the same at the appraised price. Said notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of said person or persons. If the address of said person or persons is unknown, said notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. Said person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his notice of intention to purchase, cash payment, certified check or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by said department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of said property interests.

(3) If said property interests are not sold or exchanged as provided in the preceding subsections, the department shall notify the owners of land abutting said property interests in the same manner as provided in the preceding subsection and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in the preceding subsection (2): **PROVIDED**, That if more than one abutting owner gives notice of intent to purchase said property interests the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto: **PROVIDED FURTHER**, That no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1), (2) and (3) hereof, the department shall sell said properties in the same manner as public lands of the state of Washington are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32.]

76.16.040 Acquisition—Payment—Moneys available to department. The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department of natural resources for this purpose. [1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33.]

Chapter 76.20

FIREWOOD ON STATE LANDS

Sections

76.20.010	License to remove firewood authorized.
76.20.020	Removal only for personal use.
76.20.030	Issuance of license—Fee—Limit on amount removed.
76.20.035	Removal of firewood without charge—Authorization.
76.20.040	Penalty.

76.20.010 License to remove firewood authorized. The department of natural resources may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department of natural resources for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a.]

76.20.020 Removal only for personal use. In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for his own personal use and in his own home and that he will not dispose of it to any other person. [1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b.]

76.20.030 Issuance of license—Fee—Limit on amount removed. The application may be made to the department of natural resources, and if deemed proper, the license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury of the state by the officer collecting the same and placed in the resource management cost account; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six cords of wood not fit for any use but as firewood for the use of himself and family from the premises described in the license under such regulations as the department of natural resources may prescribe. [1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c.]

76.20.035 Removal of firewood without charge—Authorization. Whenever the department of natural resources determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [1975 c 10 § 3.]

76.20.040 Penalty. Any false statement made in the application or any violation of the provisions of this chapter shall constitute a gross misdemeanor and be punishable as such. [1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d.]

Chapter 76.36
MARKS AND BRANDS

Sections

76.36.010	Definitions.
76.36.020	Forest products to be marked.
76.36.035	Registration of brands—Assignments—Fee—Rules—Penalty.
76.36.060	Impression of mark—Presumption.
76.36.070	Cancellation of registration.
76.36.090	Catch brands.
76.36.100	Right of entry to retake branded products.
76.36.110	Penalty for false branding, etc.
76.36.120	Forgery of mark, etc.—Penalty.
76.36.130	Sufficiency of mark.
76.36.140	Application of chapter to eastern Washington.
76.36.160	Deposit of fees—Use.
76.36.900	Severability—1925 ex.s. c 154.

76.36.010 Definitions. The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms and associations of persons.

(2) "Waters of this state" includes any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation or storage of forest products, including all rivers and lakes and their tributaries, harbors, bays, bayous and marshes.

(3) "Forest products" means logs, spars, piles, and poles, boom sticks and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill or tie mill, or cut into cord wood, stove wood or hewn ties.

(4) "Brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.

(5) "Catch brand" means a mark or brand used by a person as an identifying mark placed upon forest products and booming equipment previously owned by another.

(6) "Booming equipment" includes boom sticks and boom chains.

(7) "Department" means the department of natural resources. [1984 c 60 § 1; 1925 ex.s. c 154 § 1; RRS § 8381-1.]

76.36.020 Forest products to be marked. Persons who wish to identify any of their forest products which will be stored or transported in or on the waters of the state shall place a registered mark or brand in a conspicuous place on each forest product item. Placement of the registered mark or brand is prima facie evidence of ownership over forest product items which have escaped from storage or transportation. Unbranded or unmarked stray logs or forest products become the property of the state when recovered. [1984 c 60 § 2; 1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

76.36.035 Registration of brands—Assignments—Fee—Rules—Penalty. (1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted

to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(2) The department may adopt and enforce rules implementing the provisions of this chapter. A violation of any such rule shall constitute a misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [1987 c 380 § 18; 1984 c 60 § 8.]

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

76.36.060 Impression of mark—Presumption. All forest products and booming equipment having impressed thereupon a registered mark or brand are presumed to belong to the person appearing on the records of the department as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand are presumed to belong to the owner of the registered catch brand, unless there is impressed thereupon more than one registered catch brand, in which event they are presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1984 c 60 § 3; 1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

76.36.070 Cancellation of registration. The department, upon the petition of the owner of a registered mark or brand, may cancel the registration in which case the mark or brand shall be open to registration by any person subsequently applying therefor. [1984 c 60 § 4; 1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

76.36.090 Catch brands. A person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired from another, shall before using it, make application for the registration thereof to the department in the manner prescribed for the registration of other marks or brands as herein required.

The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the department shall apply equally to catch brands. The certificate of the department shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be inclosed in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1984 c 60 § 5; 1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

76.36.100 Right of entry to retake branded products. The owner of any mark or brand registered as herein provided, by himself or his duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes and beaches of this state and any mill, mill yard, mill boom, rafting or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him and to retake any forest products and booming equipment so found by him. [1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

76.36.110 Penalty for false branding, etc. Every person:

(1) Except boom companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner;

is guilty of a gross misdemeanor. [1994 c 163 § 1; 1984 c 60 § 6; 1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

76.36.120 Forgery of mark, etc.—Penalty. Every person who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand;

Shall be guilty of a felony. [1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

76.36.130 Sufficiency of mark. A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file with the department. [1988 c 128 § 47; 1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

76.36.140 Application of chapter to eastern Washington. In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: PROVIDED, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered with the department pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1988 c 128 § 48; 1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

76.36.160 Deposit of fees—Use. The department shall deposit all moneys received under this chapter in the general fund to be used exclusively for the administration of this chapter by the department. [1984 c 60 § 7; 1957 c 36 § 10.]

76.36.900 Severability—1925 ex.s. c 154. 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. [1925 ex.s. c 154 § 15; RRS § 8381-15.]

Chapter 76.42

WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

- 76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources.
 76.42.020 Definitions.
 76.42.030 Removal of wood debris—Authorized.
 76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception.
 76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce.

Navigation and harbor improvements: Title 88 RCW.

76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources. This chapter authorizes the removal of wood debris from navigable waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

76.42.020 Definitions. "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or tidal and shorelands and which is not merchantable or economically salvageable under *chapter 76.40 RCW.

"Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: PROVIDED, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner. [1994 c 163 § 2; 1973 c 136 § 3.]

*Reviser's note: Chapter 76.40 RCW was repealed by 1994 c 163 § 6.

76.42.030 Removal of wood debris—Authorized. The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchantable wood debris for his own personal use. [1994 c 163 § 3; 1973 c 136 § 4.]

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules or regulations duly promulgated thereunder. Violation of this section shall be a misdemeanor. [1973 c 136 § 7.]

76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce. The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

Chapter 76.44

INSTITUTE OF FOREST RESOURCES

Sections

- 76.44.010 Institute created.
 76.44.020 Administration of institute.
 76.44.030 Duties.
 76.44.040 Dissemination of research results.
 76.44.050 Contributions may be accepted.

76.44.010 Institute created. There is hereby created the institute of forest resources of the state of Washington which shall operate under the authority of the board of regents of the University of Washington. [1979 c 50 § 1; 1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

Severability—1979 c 50: "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 c 50 § 8.]

76.44.020 Administration of institute. The institute of forest resources shall be administered by the dean of the college of forest resources of the University of Washington who shall also be the director of the institute. [1988 c 81 § 21; 1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.030 Duties. The institute of forest resources shall pursue research and education related to the forest resource and its multiple use including its conservation, management and utilization; its evaluation of forest land use and the maintenance of its rural environment; the manufacture and marketing of forest products and the provision of recreation and aesthetic values.

In pursuit of these objectives, the institute of forest resources is authorized to cooperate with other universities, state and federal agencies, industrial institutions, domestic or foreign, where such cooperation advances these objectives. [1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.040 Dissemination of research results. The results of any research undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington and the institute is authorized to disseminate such information. [1979 c 50 § 6; 1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.050 Contributions may be accepted. The institute is authorized to solicit and/or accept funds through grants, contracts, or institutional consulting arrangements for

the prosecution of any research or education activity which it may undertake in pursuit of its objectives. [1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Severability—1979 c 50: See note following RCW 76.44.010.

Chapter 76.48

SPECIALIZED FOREST PRODUCTS

Sections	
76.48.010	Declaration of public interest.
76.48.020	Definitions.
76.48.030	Unlawful acts.
76.48.040	Agencies responsible for enforcement of chapter.
76.48.050	Specialized forest products permits—Expiration—Specifications.
76.48.060	Specialized forest products permits—Required—Forms—Filing.
76.48.062	Validation of specialized forest product permits—Authorized agents.
76.48.070	Transporting or possessing cedar or other specialized forest products—Requirements.
76.48.075	Specialized forest products from out-of-state.
76.48.080	Contents of authorization, sales invoice, or bill of lading.
76.48.085	Purchase of specialized forest products—Required records.
76.48.086	Records of buyers available for research.
76.48.094	Cedar processors—Records of purchase, possession or retention of cedar products and salvage.
76.48.096	Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful.
76.48.098	Cedar processors—Display of valid registration certificate required.
76.48.100	Exemptions.
76.48.110	Violations—Seizure and disposition of products—Disposition of proceeds.
76.48.120	False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.
76.48.130	Penalties.
76.48.140	Disposition of fines.
76.48.200	Assistance and training for minority groups.
76.48.900	Severability—1967 ex.s. c 47.
76.48.901	Severability—1977 ex.s. c 147.
76.48.902	Severability—1979 ex.s. c 94.
76.48.910	Saving—1967 ex.s. c 47.

76.48.010 Declaration of public interest. It is in the public interest of this state to protect a great natural resource and to provide a high degree of protection to the landowners of the state of Washington from the theft of specialized forest products. [1967 ex.s. c 47 § 2.]

76.48.020 Definitions. Unless otherwise required by the context, as used in this chapter:

(1) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(2) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(3) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*) and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones or seeds.

(4) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(5) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(6) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(7) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(8) "Cascara bark" means the bark of a Cascara tree.

(9) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means.

(10) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, wild edible mushrooms, and Cascara bark.

(11) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(12) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(13) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(14) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(15) "Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(16) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(17) "Specialized forest products permit" means a printed document in a form specified by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permittors" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee", who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permittor and that is located in the county where the permit is issued.

(18) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(19) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permittor signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permittor specify an earlier date. A permittor may require the actual signatures of both the permittee and permittor for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permittor, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(20) "Permit area" means a designated tract of land that may contain single or multiple harvest sites. [1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

Severability—1995 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 366 § 19.]

76.48.030 Unlawful acts. It is unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit; or

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his or her duly authorized agent or representative. [1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.040 Agencies responsible for enforcement of chapter. Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, county or municipal police forces, authorized personnel of the United States forest service, and authorized personnel of the departments of natural resources and fish and wildlife. Primary enforcement responsibility lies in the county sheriffs and their deputies. The legislature encourages county sheriffs' offices to enter into interlocal agreements with these other agencies in order to receive additional assistance with their enforcement responsibilities. [1995 c 366 § 3; 1994 c 264 § 51; 1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.050 Specialized forest products permits—Expiration—Specifications. Specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. Each permit shall be separately numbered and the permits shall be issued by consecutive numbers. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permittor. A properly completed specialized forest products permit form shall include:

(1) The date of its execution and expiration;

(2) The name, address, telephone number, if any, and signature of the permittor;

(3) The name, address, telephone number, if any, and signature of the permittee;

(4) The type of specialized forest products to be harvested or transported;

(5) The approximate amount or volume of specialized forest products to be harvested or transported;

(6) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

(7) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(8) The number from some type of valid picture identification; and

(9) Any other condition or limitation which the permittor may specify.

Except for the harvesting of Christmas trees, the permit or true copy thereof must be carried by the permittee and available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy thereof is necessary to be available at the harvest site. [1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.060 Specialized forest products permits—Required—Forms—Filing. A specialized forest products permit validated by the county sheriff shall be obtained by a person prior to harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark, or more than three United States gallons of a single species of wild edible mushroom and more than an aggregate total of nine United States gallons of wild edible mushrooms, plus one wild edible mushroom. Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permittors in reasonable quantities. A permit form shall be completed in triplicate for each permittor's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the

specialized forest products are to be harvested. Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp. Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit. In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county. While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.062 Validation of specialized forest product permits—Authorized agents. County sheriffs may contract with other entities to serve as authorized agents to validate specialized forest product permits. These entities include the United States forest service, the bureau of land management, the department of natural resources, local police departments, and other entities as decided upon by the county sheriffs' departments. An entity that contracts with a county sheriff to serve as an authorized agent to validate specialized forest product permits may make reasonable efforts to verify the information provided on the permit form such as the section, township, and range of the area where harvesting is to occur. [1995 c 366 § 15.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements. (1) Except as provided in RCW 76.48.100 and 76.48.075, it is unlawful for any person (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark, or more than three gallons of a single species of wild edible mushrooms and more than an aggregate total of nine gallons of wild edible mushrooms, plus one wild edible mushroom without having in his or her possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It is unlawful for any person either (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington any cedar products or cedar salvage without having in his or her possession a specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of the materials being so possessed or transported. [1995 c 366 § 6; 1992 c 184 § 3; 1979 ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.075 Specialized forest products from out-of-state. (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other document indicating the true origin of the specialized forest products as being outside the state. The cedar processor shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and bills of lading, and the vehicle in which the products were

transported until the true origin of the specialized forest products can be determined. [1995 c 366 § 7; 1979 ex.s. c 94 § 15.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.080 Contents of authorization, sales invoice, or bill of lading. The authorization, sales invoice, or bill of lading required by RCW 76.48.070 shall specify:

- (1) The date of its execution.
- (2) The number and type of products sold or being transported.
- (3) The name and address of the owner, vendor, or donor of the specialized forest products.
- (4) The name and address of the vendee, donee, or receiver of the specialized forest products.
- (5) The location of origin of the specialized forest products. [1979 ex.s. c 94 § 7; 1967 ex.s. c 47 § 9.]

76.48.085 Purchase of specialized forest products—Required records. Buyers who purchase specialized forest products are required to record (1) the permit number; (2) the type of forest product purchased; (3) the permit holder's name; and (4) the amount of forest product purchased. The buyer shall keep a record of this information for a period of one year from the date of purchase and make the records available for inspection by authorized enforcement officials.

The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

The [This] section shall not apply to buyers of specialized forest products at the retail sales level. [1995 c 366 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.086 Records of buyers available for research. Records of buyers of specialized forest products collected under the requirements of RCW 76.48.085 may be made available to colleges and universities for the purpose of research. [1995 c 366 § 16.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.094 Cedar processors—Records of purchase, possession or retention of cedar products and salvage. Cedar processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage for at least one year after the date of receipt. The record shall be legible and shall include the date of delivery, the license number of the vehicle delivering the products, the driver's name, and the specialized forest products permit number or the information provided for in RCW 76.48.075(5). The record must be made at the time each delivery is made. [1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11.]

76.48.096 Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful. It is unlawful for any cedar processor to purchase, take possession, or retain cedar products or cedar

salvage subsequent to the harvesting and prior to the retail sale of the products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof that appears to be valid, or obtains the information under RCW 76.48.075(5). [1995 c 366 § 8; 1979 ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.098 Cedar processors—Display of valid registration certificate required. Every cedar processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue under RCW 82.32.030 at each location where the processor receives cedar products or cedar salvage.

Permittees shall sell cedar products or cedar salvage only to cedar processors displaying registration certificates which appear to be valid. [1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.100 Exemptions. The provisions of this chapter do not apply to:

- (1) Nursery grown products.
- (2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, and cedar salvage when harvested concurrently with timber stands (a) under an approved forest practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.

(3) The activities of a landowner, his or her agent, or representative, or of a lessee of land in carrying on noncommercial property management, maintenance, or improvements on or in connection with the land of the landowner or lessee. [1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.110 Violations—Seizure and disposition of products—Disposition of proceeds. Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products found. The law enforcement officer shall provide reasonable protection for the specialized forest products involved during the period of litigation or he or she shall dispose of the specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

Upon any disposition of the case by the court, the court shall make a reasonable effort to return the specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the special-

ized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

Any person who knowingly or intentionally violates this section is guilty of forgery, and shall be punished as a class C felony providing for imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.130 Penalties. A person who violates a provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both a fine and imprisonment. [1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.140 Disposition of fines. All fines collected for violations of any provision of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred. [1977 ex.s. c 147 § 15.]

76.48.200 Assistance and training for minority groups. Minority groups have long been participants in the specialized forest products industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products industry, and other interested groups to work cooperatively to accomplish the following purposes:

(1) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products;

(2) To hold clinics to teach techniques for effective picking; and

(3) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

To the extent practicable within their existing resources, the commission on Asian-American affairs, the commission on Hispanic affairs, and the department of natural resources are encouraged to coordinate this effort. [1995 c 366 § 17.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.900 Severability—1967 ex.s. c 47. If any section, provision, or part thereof 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. [1967 ex.s. c 47 § 15.]

76.48.901 Severability—1977 ex.s. c 147. 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 147 § 16.]

76.48.902 Severability—1979 ex.s. c 94. 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 94 § 17.]

76.48.910 Saving—1967 ex.s. c 47. This chapter is not intended to repeal or modify any provision of existing law. [1967 ex.s. c 47 § 16.]

Chapter 76.52

COOPERATIVE FOREST MANAGEMENT SERVICES ACT

Sections

76.52.010	Short title.
76.52.020	Contracts with landowners.
76.52.030	Extending department forest management services to landowners.
76.52.040	Disposition of funds from landowners.

76.52.010 Short title. This chapter shall be known and cited as the "cooperative forest management services act." [1979 c 100 § 1.]

76.52.020 Contracts with landowners. The department of natural resources may, by agreement, make available to forest landowners, equipment, materials, and personnel for the purpose of more intensively managing or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agree-

ment with the landowner for services rendered and shall recover the costs thereof. [1979 c 100 § 2.]

76.52.030 Extending department forest management services to landowners. The department may, by agreement, extend forest management services to private lands as a condition of carrying out such services on state lands when the private lands are adjacent to or in close proximity to the state lands being treated. The agreement shall include provisions requiring the parties to pay all costs attributable to the conducting of the services on their respective lands. [1979 c 100 § 3.]

76.52.040 Disposition of funds from landowners. Costs recovered by the department as a result of extending forest management practices to private lands shall be credited to the program or programs providing the services. The department will report by December 31 of each odd numbered year up to and including 1985 to the house and senate natural resources committees the private acres treated as a result of this chapter. [1979 c 100 § 4.]

Chapter 76.56

CENTER FOR INTERNATIONAL TRADE IN FOREST PRODUCTS

Sections

76.56.010	Center for international trade in forest products created at the University of Washington.
76.56.020	Duties.
76.56.030	Director—Appointment.
76.56.040	Use of center's programs, research, and advisory services—Schedule of fees.
76.56.050	Solicitation of financial contributions and support—Annual report—Use of other funds.
76.56.900	Severability—1985 c 122.

Reviser's note—Sunset Act application: The center for international trade in forest products is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.333. RCW 76.56.010, 76.56.020, 76.56.030, 76.56.040, 76.56.050, 76.56.900, and 28B.50.262 are scheduled for future repeal under RCW 43.131.334.

76.56.010 Center for international trade in forest products created at the University of Washington. There is created a center for international trade in forest products at the University of Washington in the college of forest resources, which shall be referred to in this chapter as "the center." The center shall operate under the authority of the board of regents of the University of Washington. [1985 c 122 § 1.]

Sunset Act application: See note following chapter digest.

76.56.020 Duties. The center shall:

(1) Coordinate the University of Washington's college of forest resources' faculty and staff expertise to assist in:

(a) The development of research and analysis for developing policies and strategies which will expand forest-based international trade, including a major focus on secondary manufacturing;

(b) The development of technology or commercialization support for manufactured products that will meet the evolving needs of international customers;

(c) The development of research and analysis on other factors critical to forest-based trade, including the quality and availability of raw wood resources; and

(d) The coordination, development, and dissemination of market and technical information relevant to international trade in forest products, including a major focus on secondary manufacturing;

(2) Further develop and maintain computer data bases on world-wide forest products production and trade in order to monitor and report on trends significant to the Northwest forest products industry and support the center's research functions; and coordinate this system with state, federal, and private sector efforts to insure a cost-effective information resource that will avoid unnecessary duplication;

(3) Monitor international forest products markets and assess the status of the state's forest products industry, including the competitiveness of small and medium-sized secondary manufacturing firms in the forest products industry, which for the purposes of this chapter shall be firms with annual revenues of twenty-five million or less, and including the increased exports of Washington-produced products of small and medium-sized secondary manufacturing firms;

(4) Provide high-quality research and graduate education and professional nondegree training in international trade in forest products in cooperation with the University of Washington's graduate school of business administration, the school of law, the Jackson school of international studies, the Northwest policy center of the graduate school of public administration, and other supporting academic units;

(5) Develop cooperative linkages with the international marketing program for agricultural commodities and trade at Washington State University, the international trade project of the United States forest service, the department of natural resources, the department of community, trade, and economic development, the small business export finance assistance center, and other state and federal agencies to avoid duplication of effort and programs;

(6) Cooperate with personnel from the state's community and technical colleges in their development of wood products manufacturing and wood technology curriculum and offer periodic workshops on wood products manufacturing, wood technology, and trade opportunities to community colleges and private educators and trainers;

(7) Provide for public dissemination of research, analysis, and results of the center's programs to all groups, including direct assistance groups, through technical workshops, short courses, international and national symposia, cooperation with private sector networks and marketing associations, or other means, including appropriate publications;

(8) Establish an executive policy board, including representatives of small and medium-sized businesses, with at least fifty percent of its business members representing small businesses with one hundred or fewer employees and medium-sized businesses with one hundred to five hundred employees. The executive policy board shall also include a representative of the community and technical colleges, representatives of state and federal agencies, and a represen-

tative of a wood products manufacturing network or trade association of small and medium-sized wood product manufacturers. The executive policy board shall provide advice on: Overall policy direction and program priorities, state and federal budget requests, securing additional research funds, identifying priority areas of focus for research efforts, selection of projects for research, and dissemination of results of research efforts; and

(9) Establish advisory or technical committees for each research program area, to advise on research program area priorities, consistent with the international trade opportunities achievable by the forest products sector of the state and region, to help ensure projects are relevant to industry needs, and to advise on and support effective dissemination of research results. Each advisory or technical committee shall include representatives of forest products industries that might benefit from this research.

Service on the committees and the executive policy board established in subsections (8) and (9) of this section shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1994 c 282 § 1; 1992 c 121 § 1; 1987 c 195 § 16; 1985 c 122 § 2.]

Sunset Act application: See note following chapter digest.

Effective date—1994 c 282: "This act shall take effect July 1, 1994." [1994 c 282 § 6.]

76.56.030 Director—Appointment. The center shall be administered by a director appointed by the dean of the college of forest resources of the University of Washington. The director shall be a member of the professional staff of that college. [1985 c 122 § 3.]

Sunset Act application: See note following chapter digest.

76.56.040 Use of center's programs, research, and advisory services—Schedule of fees. The governor, the legislature, state agencies, and the public may use the center's programs, research, and advisory services as may be needed. The center shall establish a schedule of fees for actual services rendered. [1985 c 122 § 4.]

Sunset Act application: See note following chapter digest.

76.56.050 Solicitation of financial contributions and support—Annual report—Use of other funds. The center shall aggressively solicit financial contributions and support from the forest products industry, federal and state agencies, and other granting sources or through other arrangements to assist in conducting its activities. Subject to RCW 40.07.040, the center shall report annually to the governor and the legislature on its success in obtaining funding from nonstate sources and on its accomplishments in meeting the provisions of this chapter. It may also use separately appropriated funds of the University of Washington for the center's activities. [1994 c 282 § 2; 1987 c 505 § 74; 1985 c 122 § 5.]

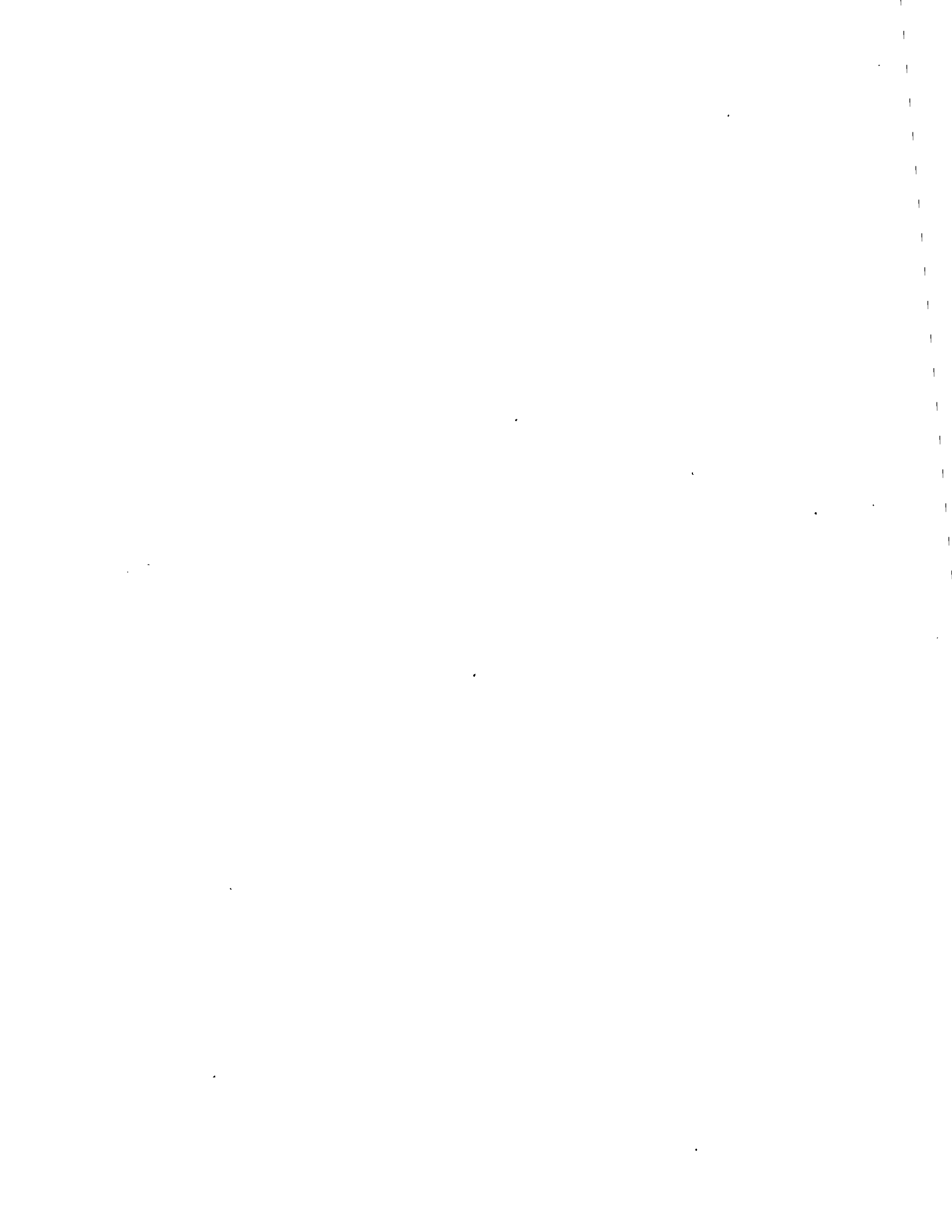
Sunset Act application: See note following chapter digest.

Effective date—1994 c 282: See note following RCW 76.56.020.

76.56.900 Severability—1985 c 122. 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 122 § 6.]

Sunset Act application: See note following chapter digest.



Title 77

GAME AND GAME FISH

Chapters

- 77.04** Department of wildlife.
- 77.08** General terms defined.
- 77.12** Powers and duties.
- 77.16** Prohibited acts and penalties.
- 77.17** Wildlife violator compact.
- 77.18** Game fish mitigation.
- 77.21** Penalties—Proceedings.
- 77.32** Licenses.
- 77.36** Wildlife damage.
- 77.44** Warm water game fish enhancement program.

Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.

Control of predatory birds injurious to agriculture: RCW 15.04.110 through 15.04.120.

Coyote getters—Use in killing of coyotes: RCW 9.41.185.

Hood Canal bridge, public sport fishing from: RCW 47.56.366.

Infractions: Chapter 7.84 RCW.

Operation and maintenance of fish collection facility on Toutle river: RCW 75.20.310.

Volunteer cooperative fish and wildlife enhancement program: Chapter 75.52 RCW.

Wildlife and recreation lands; funding of maintenance and operation: Chapter 43.98B RCW.

Chapter 77.04

DEPARTMENT OF WILDLIFE

Sections

- 77.04.010 Short title.
- 77.04.020 Composition of department—Duties and powers.
- 77.04.030 Commission—Appointment.
- 77.04.040 Commission—Qualifications of members.
- 77.04.055 Commission—Duties.
- 77.04.060 Commission—Meetings—Officers—Compensation, travel expenses.
- 77.04.080 Director—Qualifications—Salary—Powers.
- 77.04.090 Rule-making authority—Certified copy as evidence.
- 77.04.100 Tilton and Cowlitz rivers—Proposals to reinstate salmon and steelhead.
- 77.04.111 Reports.

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

77.04.010 Short title. This title is known and may be cited as "Wildlife Code of the State of Washington." [1990 c 84 § 1; 1980 c 78 § 2; 1955 c 36 § 77.04.010. Prior: 1947 c 275 § 1; Rem. Supp. 1947 § 5992-11.]

Effective date—1980 c 78: "This act shall take effect on July 1, 1981." [1980 c 78 § 137.]

Intent, construction—1980 c 78: "In enacting this 1980 act, it is the intent of the legislature to revise and reorganize the game code of this state to clarify and improve the administration of the state's game laws. Unless the context clearly requires otherwise, the revisions made to the game code by this act are not to be construed as substantive." [1980 c 78 § 1.]

Savings—1980 c 78: "This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act." [1980 c 78 § 138.]

Severability—1980 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 78 § 139.]

77.04.020 Composition of department—Duties and powers. The department consists of the state fish and wildlife commission and the director. The director is responsible for the administration and operation of the department, subject to the provisions of this title. The commission may delegate to the director any of the powers and duties vested in the commission. The director shall perform the duties prescribed by law and shall carry out the basic goals and objectives prescribed under RCW 77.04.055. [1996 c 267 § 32; 1993 sp.s. c 2 § 59; 1987 c 506 § 4; 1980 c 78 § 3; 1955 c 36 § 77.04.020. Prior: 1947 c 275 § 2; Rem. Supp. 1947 § 5992-12.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: "Washington's fish and wildlife resources are the responsibility of all residents of the state. We all benefit economically, recreationally, and aesthetically from these resources. Recognizing the state's changing environment, the legislature intends to continue to provide opportunities for the people to appreciate wildlife in its native habitat. However, the wildlife management in the state of Washington shall not cause a reduction of recreational opportunity for hunting and fishing activities. The paramount responsibility of the department remains to preserve, protect, and perpetuate all wildlife species. Adequate funding for proper management, now and for future generations, is the responsibility of everyone.

The intent of the legislature is: (1) To allow the governor to select the director of wildlife; (2) to retain the authority of the wildlife commission to establish the goals and objectives of the department; (3) to insure a high level of public involvement in the decision-making process; (4) to provide effective communications among the commission, the governor, the legislature, and the public; (5) to expand the scope of appropriate funding for the management, conservation, and enhancement of wildlife; (6) to not increase the cost of license, tag, stamp, permit, and punchcard fees prior to January 1, 1990; and (7) for the commission to carry out any other responsibilities prescribed by the legislature in this title." [1987 c 506 § 1.]

References—1987 c 506: "All references in the Revised Code of Washington to the department of game, the game commission, the director of game, and the game fund shall mean, respectively, the department of wildlife, the wildlife commission, the director of wildlife, and the wildlife fund." [1987 c 506 § 99.]

Continuation of rules, director, game commission—1987 c 506: "Rules of the department of game existing prior to July 26, 1987, shall remain in effect unless or until amended or repealed by the director of wildlife or the wildlife commission pursuant to Title 77 RCW. The director of game on July 26, 1987, shall continue as the director of wildlife until resignation or removal in accordance with the provisions of RCW 43.17.020. The game commission on July 26, 1987, shall continue as the wildlife commission." [1987 c 506 § 100.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.030 Commission—Appointment. The fish and wildlife commission consists of nine registered voters of the state. In January of each odd-numbered year, the governor shall appoint with the advice and consent of the senate two registered voters to the commission to serve for terms of six years from that January or until their successors are appointed and qualified. If a vacancy occurs on the commission prior to the expiration of a term, the governor shall appoint a registered voter within sixty days to complete the term. Three members shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. Three additional members shall be appointed at-large effective July 1, 1993; one of whom shall serve a one and one-half year term to end December 31, 1994; one of whom shall serve a three and one-half year term to end December 31, 1996; and one of whom shall serve a five and one-half year term to end December 31, 1998. Thereafter all members are to serve a six-year term. No two members may be residents of the same county. The legal office of the commission is at the administrative office of the department in Olympia. [1994 c 264 § 52; 1993 sp.s. c 2 § 60; 1987 c 506 § 5; 1981 c 338 § 11; 1980 c 78 § 4; 1955 c 36 § 77.04.030. Prior: 1947 c 275 § 3; Rem. Supp. 1947 § 5992-13.]

Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100: See RCW 75.54.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.040 Commission—Qualifications of members. Persons eligible for appointment as members of the commission shall have general knowledge of the habits and distribution of fish and wildlife and shall not hold another state, county, or municipal elective or appointive office. In making these appointments, the governor shall seek to maintain a balance reflecting all aspects of fish and wildlife, including representation recommended by organized groups representing sportfishers, commercial fishers, hunters, private landowners, and environmentalists. Persons eligible for appointment as fish and wildlife commissioners shall comply with the provisions of chapters 42.52 and 42.17 RCW. [1995 1st sp.s. c 2 § 3 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 61; 1987 c 506 § 6; 1980 c 78 § 5; 1955 c 36 § 77.04.040. Prior: 1947 c 275 § 4; Rem. Supp. 1947 § 5992-14.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

[Title 77 RCW—page 2]

77.04.055 Commission—Duties. (1) In establishing policies to preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall meet annually with the governor to:

(a) Review and prescribe basic goals and objectives related to those policies; and

(b) Review the performance of the department in implementing fish and wildlife policies.

The commission shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy and diverse fish and wildlife populations.

(2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.

(3) The commission shall establish provisions regulating food fish and shellfish as provided in RCW 75.08.080.

(4) The commission shall have final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife.

(5) The commission shall adopt rules to implement the state's fish and wildlife laws.

(6) The commission shall have final approval authority for the department's budget proposals.

(7) The commission shall select its own staff and shall appoint the director of the department. The director and commission staff shall serve at the pleasure of the commission. [1995 1st sp.s. c 2 § 4 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 62; 1990 c 84 § 2; 1987 c 506 § 7.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.04.060 Commission—Meetings—Officers—Compensation, travel expenses. The commission shall hold at least one regular meeting during the first two months of each calendar quarter, and special meetings when called by the chair and by five members. Five members constitute a quorum for the transaction of business.

The commission at a meeting in each odd-numbered year shall elect one of its members as chairman and another member as vice chairman, each of whom shall serve for a term of two years or until a successor is elected and qualified.

Members of the commission shall be compensated in accordance with RCW 43.03.250. In addition, members are allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060. [1993 sp.s. c 2 § 63. Prior: 1987 c 506 § 8; 1987 c 114 § 1; 1984 c 287 § 110; 1980 c 78 § 6; 1977 c 75 § 89; 1975-'76 2nd ex.s. c 34 § 175; 1961 c 307 § 9; 1955 c 352 § 1; 1955 c 36 § 77.04.060; prior: 1949 c 205 § 1; 1947 c 275 § 6; Rem. Supp. 1949 § 5992-16.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

77.04.080 Director—Qualifications—Salary—Powers. Persons eligible for appointment as director shall have practical knowledge of the habits and distribution of fish and wildlife. The director shall receive the salary fixed by the governor under RCW 43.03.040.

The director is the ex officio secretary of the commission and shall attend its meetings and keep a record of its business.

The director may appoint and employ necessary departmental personnel. The director may delegate to department personnel the duties and powers necessary for efficient operation and administration of the department. [1995 1st sp.s. c 2 § 5 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 64; 1987 c 506 § 9; 1980 c 78 § 8; 1955 c 36 § 77.04.080. Prior: 1947 c 275 § 8; Rem. Supp. 1947 § 5992-18.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.090 Rule-making authority—Certified copy as evidence. The commission shall adopt permanent rules and amendments to or repeals of existing rules by approval of a majority of the members by resolution, entered and recorded in the minutes of the commission: PROVIDED, That the commission may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. The commission shall adopt emergency rules by approval of a majority of the members. The commission, when adopting emergency rules under RCW 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW. Judicial notice shall be taken of the rules filed and published as provided in RCW 34.05.380 and 34.05.210.

A copy of an emergency rule, certified as a true copy by a member of the commission, the director, or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule. [1996 c 267 § 35; 1995 c 403 § 111; 1984 c 240 § 1; 1980 c 78 § 16; 1955 c 36 §

77.12.050. Prior: 1947 c 275 § 15; Rem. Supp. 1947 § 5992-25. Formerly RCW 77.12.050.]

Intent—Effective date—1996 c 267: See notes following RCW 75.08.011.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.100 Tilton and Cowlitz rivers—Proposals to reinstate salmon and steelhead. The director shall develop proposals to reinstate the natural salmon and steelhead trout fish runs in the Tilton and upper Cowlitz rivers in accordance with RCW 75.08.020(3). [1993 sp.s. c 2 § 65; 1985 c 208 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

77.04.111 Reports. The director shall provide a comprehensive annual report of all departmental operations to the governor, appropriate legislative committees, and the public, on or before October 1 of each year, to reflect the previous fiscal year. The report shall include, but not be limited to, descriptions of all departmental activities, including: Revenues generated, program costs, capital expenditures, personnel, department projects and research including cooperative projects, environmental controls, intergovernmental agreements, outlines of ongoing litigation, concluded litigation, and any major issues with the potential for state liability. The report shall describe the status of the resource and its recreational and tribal utilization.

In addition to the above elements, the commission shall prepare and submit to the governor, the appropriate legislative committees, and the public its own report and analysis on the condition of recreational hunting and fishing opportunities and wildlife and wildlife resources in the state and on the progress of the department in meeting goals and objectives set by the commission. The commission shall solicit public input in the preparation of this annual analysis. [1987 c 506 § 10.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Chapter 77.08

GENERAL TERMS DEFINED

Sections

77.08.010	Definitions.
77.08.020	"Game fish" defined.
77.08.030	"Big game" defined.
77.08.045	Migratory waterfowl terms defined.
77.08.070	"Raffle" defined.

77.08.010 Definitions. As used in this title or rules adopted pursuant to this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of fish and wildlife.
- (2) "Department" means the department of fish and wildlife.

(3) "Commission" means the state fish and wildlife commission.

(4) "Person" means and includes an individual, a corporation, or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Wildlife agent" means a person appointed and commissioned by the director, with authority to enforce laws and rules adopted pursuant to this title, and other statutes as prescribed by the legislature.

(6) "Ex officio wildlife agent" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio wildlife agent" includes fisheries patrol officers, special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish" and its derivatives means an effort to kill, injure, harass, or catch a game fish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, or possession of game animals, game birds, or game fish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, or possession of game animals, game birds, or game fish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing for game fish is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, the family Muridae of

the order Rodentia (old world rats and mice), or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices. [1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Intent—1996 c 207: "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.020 "Game fish" defined. (1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

Scientific Name	Common Name
<i>Ambloplites rupestris</i>	rock bass
<i>Coregonus clupeaformis</i>	lake white fish
<i>Ictalurus furcatus</i>	blue catfish

Ictalurus melas	black bullhead
Ictalurus natalis	yellow bullhead
Ictalurus nebulosus	brown bullhead
Ictalurus punctatus	channel catfish
Lepomis cyanellus	green sunfish
Lepomis gibbosus	pumpkinseed
Lepomis gulosus	warmouth
Lepomis macrochirus	bluegill
Lota lota	burbot or fresh water ling
Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomoxis annularis	white crappie
Pomoxis nigromaculatus	black crappie
Prosopium williamsoni	mountain white fish
Oncorhynchus aquabonita	golden trout
Oncorhynchus clarkii	cutthroat trout
Oncorhynchus mykiss	rainbow or steelhead trout
Salmo salar (in its landlocked form)	Atlantic salmon
Salmo trutta	brown trout
Salvelinus fontinalis	eastern brook trout
Salvelinus malma	Dolly Varden trout
Salvelinus namaycush	lake trout
Stizostedion vitreum	Walleye
Thymallus arcticus	arctic grayling

(2) Private sector cultured aquatic products as defined in RCW 15.85.020 are not game fish. [1989 c 218 § 2; 1985 c 457 § 21; 1980 c 78 § 10; 1969 ex.s. c 19 § 1; 1955 c 36 § 77.08.020. Prior: 1947 c 275 § 10; Rem. Supp. 1947 § 5992-20.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.030 "Big game" defined. As used in this title or rules of the commission, "big game" means the following species:

Scientific Name	Common Name
Cervus canadensis	elk or wapiti
Odocoileus hemionus	blacktail deer or mule deer
Odocoileus virginianus	whitetail deer
Alces americana	moose
Oreamnos americanus	mountain goat
Rangifer caribou	caribou
Ovis canadensis	mountain sheep
Antilocapra americana	pronghorn antelope
Felis concolor	cougar or mountain lion
Euarctos americana	black bear
Ursus horribilis	grizzly bear

[1980 c 78 § 11; 1971 ex.s. c 166 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.045 Migratory waterfowl terms defined. As used in this title or rules adopted pursuant to this title:

(1) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks, geese, and swans;

(2) "Migratory waterfowl stamp" means the stamp that is required by RCW 77.32.350 to be in the possession of persons over sixteen years of age to hunt migratory waterfowl;

(3) "Prints and artwork" means replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory waterfowl stamp that is required by RCW 77.32.350. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications, or any other kind of design; and

(4) "Migratory waterfowl art committee" means the committee created by RCW 77.12.680. The committee's primary function is to select the annual migratory waterfowl stamp design. [1987 c 506 § 12; 1985 c 243 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.08.070 "Raffle" defined. "Raffle," as used in this title, means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle. [1996 c 101 § 4.]

Findings—1996 c 101: See note following RCW 77.12.770.

Chapter 77.12

POWERS AND DUTIES

Sections

77.12.010	Policy of protection of wildlife—Limitation on prohibiting fishing with bait or artificial lures.
77.12.020	Wildlife to be classified.
77.12.030	Authority to regulate wildlife.
77.12.031	Llamas and alpacas.
77.12.035	Protection of grizzly bears—Limitation on transplantation or introduction—Negotiations with federal and state agencies.
77.12.040	Regulating the taking or possessing of game—Emergency rules—Game reserves, closed areas and waters.
77.12.055	Enforcement authority of director and wildlife agents.
77.12.060	Service of process by wildlife agents—Aid by citizens.
77.12.070	Duties of wildlife agents.
77.12.080	Arrest without warrant.
77.12.090	Search without warrant.
77.12.095	Inspections of commercial enterprises involved with wildlife.
77.12.101	Seizure of contraband wildlife and devices—Forfeiture.
77.12.103	Seizure or forfeiture of personal property—Limitations.
77.12.105	Authority to retain or transfer wildlife.
77.12.120	Search for contraband game—Warrants.
77.12.130	Certain devices declared public nuisances.
77.12.140	Acquisition or sale of wildlife.
77.12.150	Game seasons—Opening and closing—Bag limits.
77.12.170	State wildlife fund—Deposits.
77.12.185	Publications—Authority to recover costs—Disposition of moneys.
77.12.190	Diversion of wildlife fund moneys prohibited.
77.12.200	Acquisition of property.
77.12.201	Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit.
77.12.203	In lieu payments authorized—Procedure—Game lands defined.
77.12.204	Grazing lands—Fish and wildlife goals—Implementation.
77.12.210	Department property—Management, sale.
77.12.220	Acquisition or transfer of property.
77.12.230	Local assessments against department property.

- 77.12.240 Authority to take wildlife—Disposition.
- 77.12.250 Entry upon property in course of duty.
- 77.12.260 Agreements to prevent damage to private property.
- 77.12.315 Dogs harassing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity.
- 77.12.320 Agreements for purposes related to wildlife—Acceptance of compensation, gifts, grants.
- 77.12.323 Special wildlife account—Investments.
- 77.12.325 Cooperation with Oregon to assure yields of Columbia river wildlife.
- 77.12.330 Exclusive fishing waters for youths.
- 77.12.360 Withdrawal of state land from lease—Compensation.
- 77.12.370 Withdrawal of state land from lease—County procedures, approval, hearing.
- 77.12.380 Withdrawal of state land from lease—Actions by commissioner of public lands.
- 77.12.390 Withdrawal of state land from lease—Payment.
- 77.12.420 Improvement of conditions for growth of game fish.
- 77.12.425 Director may modify inadequate fishways and protective devices.
- 77.12.430 Wildlife restoration—Federal act.
- 77.12.440 Fish restoration and management projects—Federal act.
- 77.12.450 Snake river boundary—Cooperation with Idaho for adoption and enforcement of rules regarding wildlife.
- 77.12.470 Snake river boundary—Concurrent jurisdiction of Idaho and Washington courts and law enforcement officers.
- 77.12.480 Snake river boundary—Honoring licenses to take wildlife of either state.
- 77.12.490 Snake river boundary—Purpose—Restrictions.
- 77.12.530 Hunting and fishing contests—Field trials for dogs—Rules—Limitation.
- 77.12.540 Public shooting grounds—Effect of filing—Use for booming.
- 77.12.550 Tidelands used as public shooting grounds—Diversion.
- 77.12.560 Tidelands used as public shooting grounds—Rules.
- 77.12.570 Game farm licenses—Rules—Exemption.
- 77.12.580 Game farms—Authority to dispose of eggs.
- 77.12.590 Game farms—Tagging of products—Exemption.
- 77.12.600 Game farms—Shipping of wildlife—Exemption.
- 77.12.610 Wildlife check stations—Purpose.
- 77.12.620 Wildlife check stations—Stopping for inspection.
- 77.12.630 Wildlife check stations—Other inspections, powers.
- 77.12.650 Protection of bald eagles and their habitats—Cooperation required.
- 77.12.655 Habitat buffer zones for bald eagles—Rules.
- 77.12.670 Migratory waterfowl stamp—Deposit and use of revenues.
- 77.12.680 Migratory waterfowl art committee—Membership—Terms—Vacancies—Chairman—Review of expenditures—Compensation.
- 77.12.690 Migratory waterfowl art committee—Duties—Deposit and use of funds—Audits.
- 77.12.710 Game fish production—Double by year 2000.
- 77.12.720 Firearms range account—Grant program—Rules.
- 77.12.730 Firearms range advisory committee.
- 77.12.740 Firearms range account—Gifts and grants.
- 77.12.750 Senior environmental corps—Department powers and duties.
- 77.12.760 Steelhead trout fishery.
- 77.12.770 Hunting big game—Auction or raffle—Procedure.
- 77.12.780 Private lands—Raffle authorization to hunt big game.

Wild salmonid policy: RCW 75.28.760.

77.12.010 Policy of protection of wildlife—Limitation on prohibiting fishing with bait or artificial lures. Wildlife is the property of the state. The department shall preserve, protect, and perpetuate wildlife. Game animals, game birds, and game fish may be taken only at times or places, or in manners or quantities as in the judgment of the commission maximizes public recreational opportunities without impairing the supply of wildlife.

The commission shall not adopt rules that categorically prohibit fishing with bait or artificial lures in streams, rivers, beaver ponds, and lakes except that the commission may

adopt rules and regulations restricting fishing methods upon a determination by the director that an individual body of water or part thereof clearly requires a fishing method prohibition to conserve or enhance the fisheries resource or to provide selected fishing alternatives. The commission shall attempt to maximize the public recreational fishing opportunities of all citizens, particularly juvenile, handicapped, and senior citizens.

Nothing contained herein shall be construed to infringe on the right of a private property owner to control the owner's private property. [1985 c 438 § 1; 1980 c 78 § 12; 1977 c 74 § 1; 1955 c 36 § 77.12.010. Prior: 1947 c 275 § 11; Rem. Supp. 1947 § 5992-21.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.020 Wildlife to be classified. (1) The director shall investigate the habits and distribution of the various species of wildlife native to or adaptable to the habitats of the state. The commission shall determine whether a species should be managed by the department and, if so, classify it under this section.

(2) The commission may classify by rule wild animals as game animals and game animals as fur-bearing animals.

(3) The commission may classify by rule wild birds as game birds or predatory birds. All wild birds not otherwise classified are protected wildlife.

(4) In addition to those species listed in RCW 77.08.020, the commission may classify by rule as game fish other species of the class Osteichthyes that are commonly found in fresh water except those classified as food fish by the director.

(5) The director may recommend to the commission that a species of wildlife should not be hunted or fished. The commission may designate species of wildlife as protected.

(6) If the director determines that a species of wildlife is seriously threatened with extinction in the state of Washington, the director may request its designation as an endangered species. The commission may designate an endangered species.

(7) If the director determines that a species of the animal kingdom, not native to Washington, is dangerous to the environment or wildlife of the state, the director may request its designation as deleterious exotic wildlife. The commission may designate deleterious exotic wildlife. [1994 c 264 § 53; 1987 c 506 § 13; 1980 c 78 § 13; 1969 ex.s. c 18 § 1; 1955 c 36 § 77.12.020. Prior: 1947 c 275 § 12; Rem. Supp. 1947 § 5992-22.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.030 Authority to regulate wildlife. The director may regulate the collection, importation, and transportation of wildlife. [1987 c 506 § 14; 1984 c 240 § 2; 1980 c 78 § 14; 1969 ex.s. c 18 § 2; 1955 c 36 § 77.12.030. Prior: 1947 c 275 § 13; Rem. Supp. 1947 § 5992-23.]

Legislative findings and Intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.031 Llamas and alpacas. The authority of the department does not extend to preventing, controlling, or suppressing diseases in llamas or alpacas or to controlling the movement or sale of llamas or alpacas.

This section shall not be construed as granting or denying authority to the department to prevent, control, or suppress diseases in any animals other than llamas and alpacas. [1994 c 264 § 54; 1993 c 80 § 4.]

Department of agriculture: RCW 16.36.130.

77.12.035 Protection of grizzly bears—Limitation on transplantation or introduction—Negotiations with federal and state agencies. The department shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington state may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with federal and state agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section. [1995 c 370 § 1.]

77.12.040 Regulating the taking or possessing of game—Emergency rules—Game reserves, closed areas and waters. The commission shall adopt, amend, or repeal, and enforce reasonable rules prohibiting or governing the time, place, and manner of taking or possessing game animals, game birds, or game fish. The commission may specify the quantities, species, sex, and size of game animals, game birds, or game fish that may be taken or possessed. The commission shall regulate the taking, sale, possession, and distribution of wildlife and deleterious exotic wildlife. The director may adopt emergency rules under RCW 77.12.150.

The commission may establish by rule game reserves and closed areas where hunting for wild animals or wild birds may be prohibited and closed waters where fishing for game fish may be prohibited. [1987 c 506 § 15; 1984 c 240 § 3; 1980 c 78 § 15; 1969 ex.s. c 18 § 3; 1955 c 36 § 77.12.040. Prior: 1947 c 275 § 14; Rem. Supp. 1947 § 5992-24.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.055 Enforcement authority of director and wildlife agents. (1) Jurisdiction and authority granted under RCW 77.12.060, 77.12.070, and 77.12.080 to the director, wildlife agents, and ex officio wildlife agents is limited to the laws and rules adopted pursuant to this title pertaining to wildlife or to the management, operation, maintenance, or use of or conduct on real property used, owned, leased, or controlled by the department and other statutes as prescribed by the legislature. However, when acting within the scope

of these duties and when an offense occurs in the presence of the wildlife agent who is not an ex officio wildlife agent, the wildlife agent may enforce all criminal laws of the state. The wildlife agent must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a supplemental course in criminal law enforcement as approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(2) Wildlife agents are peace officers.

(3) Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by a wildlife agent rests with the department unless the wildlife agent acts under the direction and control of another agency or unless the liability is otherwise assumed under a written agreement between the department and another agency.

(4) Wildlife agents may serve and execute warrants and processes issued by the courts. [1993 sp.s. c 2 § 67; 1988 c 36 § 50; 1987 c 506 § 16; 1985 c 155 § 2; 1980 c 78 § 17.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.060 Service of process by wildlife agents—Aid by citizens. The director, wildlife agents, and ex officio wildlife agents may serve and execute warrants and process issued by the courts to enforce the law and rules adopted pursuant to this title.

To enforce these laws or rules, they may call to their aid any ex officio wildlife agent or citizen and that person shall render aid. [1987 c 506 § 17; 1980 c 78 § 18; 1961 c 68 § 1; 1955 c 36 § 77.12.060. Prior: 1947 c 275 § 16; Rem. Supp. 1947 § 5992-26.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.070 Duties of wildlife agents. Wildlife agents and ex officio wildlife agents within their respective jurisdictions shall enforce the law and rules adopted pursuant to this title. [1987 c 506 § 18; 1980 c 78 § 19; 1971 ex.s. c 173 § 1; 1961 c 68 § 2; 1955 c 36 § 77.12.070. Prior: 1947 c 275 § 17; Rem. Supp. 1947 § 5992-27.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.080 Arrest without warrant. Wildlife agents and ex officio wildlife agents may arrest without warrant persons found violating the law or rules adopted pursuant to this title. [1987 c 506 § 19; 1980 c 78 § 20; 1971 ex.s. c 173 § 2; 1961 c 68 § 3; 1955 c 36 § 77.12.080. Prior: 1947 c 275 § 18; Rem. Supp. 1947 § 5992-28.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.090 Search without warrant. Wildlife agents, and ex officio wildlife agents may make a reasonable search without warrant of conveyances, vehicles, packages, game baskets, game coats, or other receptacles for wildlife, or tents, camps, or similar places which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title. [1987 c 506 § 20; 1980 c 78 § 21; 1955 c 36 § 77.12.090. Prior: 1947 c 275 § 19; Rem. Supp. 1947 § 5992-29.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.095 Inspections of commercial enterprises involved with wildlife. Wildlife agents may inspect without warrant at reasonable times and in a reasonable manner the premises, wildlife, and records of any commercial enterprise operating under the authority of a license or permit issued by the department or any commercial business that sells, stores, transports, or possesses wildlife. [1982 c 152 § 1; 1980 c 78 § 22.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.101 Seizure of contraband wildlife and devices—Forfeiture. (1) Wildlife agents and ex officio wildlife agents may seize without a warrant wildlife, as defined in RCW 77.08.010(16), they have probable cause to believe have been taken, killed, transported, or possessed in violation of this title or rule of the commission or director. Agents may also seize without warrant boat(s), vehicle(s), all conveyances, airplane(s), motorized implement(s), gear, appliance(s), or other articles they have probable cause to believe: (a) Are held with intent to violate; or (b) were used in the violation of Title 77 RCW, or any regulation pursuant thereto when the species involved is one which is listed in RCW 77.21.070, or any wildlife involved in trafficking under RCW 77.16.040 or illegal netting of game fish under RCW 77.16.060. However, agents may not seize any item or article, other than evidence, from a violator if under the circumstances it is reasonable to conclude that the violation was inadvertent. The articles seized shall be forfeited to the state, upon conviction, plea of guilty, or bail forfeiture. Articles seized may be recovered by their owner by depositing into court a cash bond equal to the value of the seized articles. The cash bond is subject to forfeiture in lieu of the seized articles.

(2)(a) In the event of a seizure of an article under subsection (1) of this section, proceedings for forfeiture shall be deemed commenced by bail forfeiture, plea of guilty, or upon conviction. The seizing authority shall serve notice within fifteen days following the seizure on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested, and

service by such mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(b) If no person notifies the department in writing of the person's claim of ownership or right to possession of articles seized pursuant to subsection (1) of this section within forty-five days of the seizure, the articles shall be deemed forfeited.

(c) If any person notifies the department in writing within forty-five days of the seizure, the person shall be afforded an opportunity to be heard as to the claim or right. The hearing shall be before the director or his designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. The department hearing and any appeal therefrom shall be under Title 34 RCW. The burden of producing evidence shall be upon the person claiming to be the lawful owner or person claiming lawful right of possession of the articles seized. The department shall promptly return the seized articles to the claimant upon a determination by the director or designee, an administrative law judge, or a court that the claimant is the present lawful owner or is lawfully entitled to possession of the articles seized, and that the seized articles were improperly seized.

(d)(i) No conveyance, including vessels, vehicles, or aircraft, is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(ii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge nor consented to the act or omission.

(e) When seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to such agency for the use of enforcing Title 77 RCW, or sell such property, and deposit the proceeds to the wildlife fund in the state treasury, as provided for in RCW 77.12.170. [1989 c 314 § 2.]

Legislative finding—1989 c 314: "In order to improve the enforcement of wildlife laws it is important to increase the penalties upon poachers by seizing the conveyances and gear that are used in poaching activities and to cause forfeiture of those items to the department." [1989 c 314 § 1.]

77.12.103 Seizure or forfeiture of personal property—Limitations. (1) The burden of proof of any exemption or exception to seizure or forfeiture of personal property involved with wildlife offenses is upon the person claiming it.

(2) An authorized state, county, or municipal officer may be subject to civil liability under RCW 77.12.101 for willful misconduct or gross negligence in the performance of his or her duties.

(3) The director, the fish and wildlife commission, or the department may be subject to civil liability for their willful or reckless misconduct in matters involving the seizure and forfeiture of personal property involved with wildlife offenses. [1993 sp.s. c 2 § 68; 1989 c 314 § 3.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Finding—1989 c 314: See note following RCW 77.12.101.

77.12.105 Authority to retain or transfer wildlife.

Except as otherwise provided in this title, a person who has lawfully acquired possession of wildlife and who desires to retain or transfer it may do so in accordance with the rules adopted pursuant to this title. [1987 c 506 § 22; 1980 c 78 § 71; 1977 c 44 § 2; 1955 c 36 § 77.16.030. Prior: 1947 c 275 § 42; Rem. Supp. 1947 § 5992-51. Formerly RCW 77.16.030.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.120 Search for contraband game—Warrants.

Upon complaint showing probable cause for believing that wildlife unlawfully caught, taken, killed, controlled, possessed, or transported, is concealed or kept in a game basket, game coat, package, or other receptacle for wildlife, or at a business place, vehicle, or other place, the court shall issue a search warrant and have the place searched for wildlife. The court may have a building, enclosure, vehicle, or receptacle opened or entered and the contents examined. [1980 c 78 § 26; 1955 c 36 § 77.12.120. Prior: 1947 c 275 § 22; Rem. Supp. 1947 § 5992-32.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.130 Certain devices declared public nuisances.

Articles or devices unlawfully used, possessed, or maintained for catching, taking, killing, attracting, or decoying wildlife are public nuisances. If necessary, wildlife agents and ex officio wildlife agents may seize, abate, or destroy these public nuisances without warrant or process. [1980 c 78 § 27; 1955 c 36 § 77.12.130. Prior: 1947 c 275 § 23; Rem. Supp. 1947 § 5992-33.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.140 Acquisition or sale of wildlife.

The director, acting in a manner not inconsistent with criteria established by the commission, may obtain by purchase, gift, or exchange and may sell or transfer wildlife and their eggs for stocking, research, or propagation. [1987 c 506 § 23; 1980 c 78 § 28; 1955 c 36 § 77.12.140. Prior: 1947 c 275 § 24; Rem. Supp. 1947 § 5992-34.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.150 Game seasons—Opening and closing—

Bag limits. By emergency rule only, and in accordance with criteria established by the commission, the director may close or shorten a season for game animals, game birds, or game fish, and after a season has been closed or shortened, may reopen it and reestablish bag limits on game animals, game birds, or game fish during that season. The director shall advise the commission of the adoption of emergency

rules. A copy of an emergency rule, certified as a true copy by the director or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule.

If the director finds that game animals have increased in numbers in an area of the state so that they are damaging public or private property or over-utilizing their habitat, the commission may establish a special hunting season and designate the time, area, and manner of taking and the number and sex of the animals that may be killed or possessed by a licensed hunter. The director shall determine by random selection the identity of hunters who may hunt within the area and shall determine the conditions and requirements of the selection process. The director shall include notice of the special season in the rules establishing open seasons. [1987 c 506 § 24; 1984 c 240 § 4; 1980 c 78 § 29; 1977 ex.s. c 58 § 1; 1975 1st ex.s. c 102 § 1; 1955 c 36 § 77.12.150. Prior: 1949 c 205 § 2; 1947 c 275 § 25; Rem. Supp. 1949 § 5992-35.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Special hunting season permits: RCW 77.32.370.

77.12.170 State wildlife fund—Deposits. (1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

- (a) Rentals or concessions of the department;
 - (b) The sale of real or personal property held for department purposes;
 - (c) The sale of licenses, permits, tags, stamps, and punchcards required by this title;
 - (d) Fees for informational materials published by the department;
 - (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;
 - (f) Articles or wildlife sold by the director under this title;
 - (g) Compensation for wildlife losses or gifts or grants received under RCW 77.12.320;
 - (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
 - (i) The sale of personal property seized by the department for wildlife violations; and
 - (j) The department's share of revenues from auctions and raffles authorized by the commission.
- (2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund. [1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334. Prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

Findings—1996 c 101: See note following RCW 77.12.770.

Finding—1989 c 314: See note following RCW 77.12.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

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

Findings—1983 1st ex.s. c 8: See note following RCW 77.21.070.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—1981 c 310: "(1) Sections 9 and 10 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 on July 1, 1981.

(2) Section 13 of this act shall take effect on May 1, 1982.

(3) Sections 8, 11, 12, and 14 of this act shall take effect on July 1, 1982.

(4) All other sections of this act shall take effect on January 1, 1982." [1981 c 310 § 32.]

Reviser's note: (1) "Sections 9 and 10" refer to the 1981 c 310 amendments to RCW 77.32.020 and to the enactment of RCW 77.32.330.

(2) "Section 13" refers to the enactment of RCW 77.32.360.

(3) "Sections 8, 11, 12, and 14" refer to the enactment of RCW 77.32.320, 77.32.340, 77.32.350, and 77.32.370.

Legislative intent—1981 c 310: "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.185 Publications—Authority to recover costs—Disposition of moneys. The director may collect moneys to recover the reasonable costs of publication of informational materials by the department and shall deposit them in the state treasury to be credited to the state wildlife fund. [1987 c 506 § 26; 1980 c 78 § 66; 1979 c 56 § 2. Formerly RCW 77.12.520.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.190 Diversion of wildlife fund moneys prohibited. Moneys in the state wildlife fund may be used only for the purposes of this title, including the payment of principal and interest on bonds issued for capital projects. [1991 sp.s. c 31 § 17; 1987 c 506 § 27; 1980 c 78 § 34; 1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992-38.]

Severability—1991 sp.s. c 31: See RCW 43.991.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.200 Acquisition of property. The commission may authorize the director to acquire by gift, purchase, lease, or condemnation lands, buildings, waters, or other necessary property for purposes consistent with this title, together with rights of way for access to the property so acquired. Except to clear title and acquire access rights of way, the power of condemnation may be exercised by the director only when an appropriation has been made by the legislature for the acquisition of a specific property. [1987 c 506 § 28; 1980 c 78 § 35; 1965 ex.s. c 97 § 1; 1955 c 36 § 77.12.200. Prior: 1953 c 65 § 1; 1947 c 275 § 29; Rem. Supp. 1947 § 5992-39.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit. The legislative authority of a county may elect, by giving written notice to the director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW 77.12.203. Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250. The election shall continue until the department is notified differently prior to January 1st of any year. [1987 c 506 § 29. Prior: 1984 c 258 § 335; 1984 c 214 § 1; 1980 c 78 § 36; 1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

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

Effective date—1984 c 214: "This act takes effect on January 1, 1985." [1984 c 214 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.203 In lieu payments authorized—Procedure—Game lands defined. (1) Notwithstanding RCW 84.36.010 or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin shall be considered game lands regardless of acreage.

(3) This section shall not apply to lands transferred after April 23, 1990, to the department from other state agencies. [1990 1st ex.s. c 15 § 11; 1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

Limitations—1990 1st ex.s. c 15: "Amounts saved by operation of section 11 of this act during the 1989-91 fiscal biennium may be used only for financing capital facilities." [1990 1st ex.s. c 15 § 12.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Effective date—1984 c 214: See note following RCW 77.12.201.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.204 Grazing lands—Fish and wildlife goals—Implementation. The *department of wildlife shall implement practices necessary to meet the standards developed under RCW 79.01.295 on agency-owned and managed agricultural and grazing lands. The standards may be modified on a site-specific basis as necessary and as determined by the *department of fisheries or wildlife, for species that these agencies respectively manage, to achieve the goals established under RCW 79.01.295(1). Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to RCW 79.01.295.

This section shall in no way prevent the *department of wildlife from managing its lands to accomplish its statutory mandate pursuant to RCW 77.12.010, nor shall it prevent the department from managing its lands according to the provisions of RCW 77.12.210 or rules adopted pursuant to this chapter. [1993 sp.s. c 4 § 6.]

***Reviser's note:** Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.01.2951.

77.12.210 Department property—Management, sale. The director shall maintain and manage real or personal property owned, leased, or held by the department and shall control the construction of buildings, structures, and improvements in or on the property. The director may adopt rules for the operation and maintenance of the property.

The commission may authorize the director to sell timber, gravel, sand, and other materials or products from real property held by the department and may authorize the director to sell or lease the department's real or personal property or grant concessions or rights of way for roads or utilities in the property. Oil and gas resources owned by the state which lie below lands owned, leased, or held by the department shall be offered for lease by the commissioner of public lands pursuant to chapter 79.14 RCW with the proceeds being deposited in the state wildlife fund: **PROVIDED,** That the commissioner of public lands shall condition such leases at the request of the department to protect wildlife and its habitat.

If the commission determines that real or personal property held by the department cannot be used advantageously by the department, the director may dispose of that property if it is in the public interest.

If the state acquired real property with use limited to specific purposes, the director may negotiate terms for the return of the property to the donor or grantor. Other real property shall be sold to the highest bidder at public auction. After appraisal, notice of the auction shall be published at least once a week for two successive weeks in a newspaper of general circulation within the county where the property is located at least twenty days prior to sale.

Proceeds from the sales shall be deposited in the state wildlife fund. [1987 c 506 § 30; 1980 c 78 § 38; 1969 ex.s. c 73 § 1; 1955 c 36 § 77.12.210. Prior: 1947 c 275 § 30; Rem. Supp. 1947 § 5992-40.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Small works roster of public works contractors: RCW 39.04.150.

77.12.220 Acquisition or transfer of property. For purposes of this title, the commission may make agreements to obtain real or personal property or to transfer or convey property held by the state to the United States or its agencies or instrumentalities, political subdivisions of this state, public service companies, or other persons, if in the judgment of the commission and the attorney general the transfer and conveyance is consistent with public interest.

If the commission agrees to a transfer or conveyance under this section or to a sale or return of real property under RCW 77.12.210, the director shall certify, with the attorney general, to the governor that the agreement has been made. The certification shall describe the real property. The governor then may execute and the secretary of state attest and deliver to the appropriate entity or person the instrument necessary to fulfill the agreement. [1987 c 506 § 31; 1980 c 78 § 39; 1955 c 36 § 77.12.220. Prior: 1949 c 205 § 3; 1947 c 275 § 31; Rem. Supp. 1949 § 5992-41.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.230 Local assessments against department property. The director may pay lawful local improvement district assessments for projects that may benefit wildlife or wildlife-oriented recreation made against lands held by the state for department purposes. The payments may be made from money appropriated from the state wildlife fund to the department. [1987 c 506 § 32; 1980 c 78 § 40; 1955 c 36 § 77.12.230. Prior: 1947 c 275 § 32; Rem. Supp. 1947 § 5992-42.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.240 Authority to take wildlife—Disposition. The director may authorize the removal or killing of wildlife that is destroying or injuring property, or when it is necessary for wildlife management or research.

The director or other employees of the department shall dispose of wildlife taken or possessed by them under this title in the manner determined by the director to be in the best interest of the state. Proceeds from sales shall be deposited in the state treasury to be credited to the state wildlife fund. [1989 c 197 § 1; 1987 c 506 § 33; 1980 c 78 § 41; 1955 c 36 § 77.12.240. Prior: 1947 c 275 § 33; Rem. Supp. 1947 § 5992-43.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.250 Entry upon property in course of duty.

The director, wildlife agents, ex officio wildlife agents, and department employees may enter upon lands or waters and remain there while performing their duties without liability for trespass. [1980 c 78 § 42; 1955 c 36 § 77.12.250. Prior: 1947 c 275 § 34; Rem. Supp. 1947 § 5992-44.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.260 Agreements to prevent damage to private property. The director may make written agreements to prevent damage to private property by wildlife. The department may furnish money, material, or labor under these agreements. [1987 c 506 § 34; 1980 c 78 § 43; 1955 c 36 § 77.12.260. Prior: 1949 c 238 § 1; 1947 c 275 § 35; Rem. Supp. 1949 § 5992-45.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.315 Dogs harassing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity. If the director determines that a severe problem exists in an area of the state because deer and elk are being pursued, harassed, attacked or killed by dogs, the director may declare by emergency rule that an emergency exists and specify the area where it is lawful for wildlife agents to take into custody or destroy the dogs if necessary. Wildlife agents who take into custody or destroy a dog pursuant to this section are immune from civil or criminal liability arising from their actions. [1987 c 506 § 40; 1980 c 78 § 49; 1971 ex.s. c 183 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.320 Agreements for purposes related to wildlife—Acceptance of compensation, gifts, grants. (1) The commission may make agreements with persons, political subdivisions of this state, or the United States or its agencies or instrumentalities, regarding wildlife-oriented recreation and the propagation, protection, conservation, and control of wildlife.

(2) The director may make written agreements with the owners or lessees of real or personal property to provide for the use of the property for wildlife-oriented recreation. The director may adopt rules governing the conduct of persons in or on the real property.

(3) The director may accept compensation for wildlife losses or gifts or grants of personal property for use by the department. [1987 c 506 § 41; 1980 c 78 § 50; 1975 1st ex.s. c 207 § 1; 1974 ex.s. c 67 § 1; 1955 c 36 § 77.12.320. Prior: 1947 c 275 § 37; Rem. Supp. 1947 § 5992-47.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.323 Special wildlife account—Investments.

(1) There is established in the state wildlife fund a special wildlife account. Moneys received under RCW 77.12.320 as now or hereafter amended as compensation for wildlife losses shall be deposited in the state treasury to be credited to the special wildlife account.

(2) The director may advise the state treasurer and the state investment board of a surplus in the special wildlife account above the current needs. The state investment board may invest and reinvest the surplus, as the commission deems appropriate, in an investment authorized by RCW 43.84.150 or in securities issued by the United States government as defined by RCW 43.84.080 (1) and (4). Income received from the investments shall be deposited to the credit of the special wildlife account. [1987 c 506 § 42; 1982 c 10 § 15. Prior: 1981 c 3 § 43; 1980 c 78 § 51; 1975 1st ex.s. c 207 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.325 Cooperation with Oregon to assure yields of Columbia river wildlife. The commission may cooperate with the Oregon fish and wildlife commission in the adoption of rules to assure an annual yield of wildlife on the Columbia river and to prevent the taking of wildlife at places or times that might endanger wildlife. [1980 c 78 § 52; 1959 c 315 § 2.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.330 Exclusive fishing waters for youths. The commission may establish by rule exclusive fishing waters for minors within specified ages. [1980 c 78 § 53; 1955 c 36 § 77.12.330. Prior: 1947 c 275 § 38; Rem. Supp. 1947 § 5992-48.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.360 Withdrawal of state land from lease—Compensation. Upon written request of the department, the department of natural resources may withdraw from lease state-owned lands described in the request. The request shall bear the endorsement of the county legislative authority if the lands were acquired under RCW 76.12.030 or 76.12.080. Withdrawals shall conform to the state outdoor recreation plan. If the lands are held for the benefit of the common school fund or another fund, the department shall pay compensation equal to the lease value of the lands to the appropriate fund. [1980 c 78 § 54; 1969 ex.s. c 129 § 3; 1955 c 36 § 77.12.360. Prior: 1947 c 130 § 1; Rem. Supp. 1947 § 8136-10.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.370 Withdrawal of state land from lease—County procedures, approval, hearing. Prior to the forwarding of a request needing endorsement under RCW

77.12.360, the director shall present the request to the legislative authority of the county in which the lands are located for its approval. The legislative authority, before acting on the request, may call a public hearing. The hearing shall take place within thirty days after presentation of the request to the legislative authority.

The director shall publish notice of the public hearing called by the legislative authority in a newspaper of general circulation within the county at least once a week for two successive weeks prior to the hearing. The notice shall contain a copy of the request and the time and place of the hearing.

The chairman of the county legislative authority shall preside at the public hearing. The proceedings shall be informal and all persons shall have a reasonable opportunity to be heard.

Within ten days after the hearing, the county legislative authority shall endorse its decision on the request for withdrawal. The decision is final and not subject to appeal. [1987 c 506 § 43; 1980 c 78 § 55; 1955 c 36 § 77.12.370. Prior: 1947 c 130 § 2; Rem. Supp. 1947 § 8136-11.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.380 Withdrawal of state land from lease—Actions by commissioner of public lands. Upon receipt of a request under RCW 77.12.360, the commissioner of public lands shall determine if the withdrawal would benefit the people of the state. If the withdrawal would be beneficial, the commissioner shall have the lands appraised for their lease value. Before withdrawal, the department shall transmit to the commissioner a voucher authorizing payment from the state wildlife fund in favor of the fund for which the lands are held. The payment shall equal the amount of the lease value for the duration of the withdrawal. [1987 c 506 § 44; 1980 c 78 § 56; 1955 c 36 § 77.12.380. Prior: 1947 c 130 § 3; Rem. Supp. 1947 § 8136-12.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.390 Withdrawal of state land from lease—Payment. Upon receipt of a voucher under RCW 77.12.380, the commissioner of public lands shall withdraw the lands from lease. The commissioner shall forward the voucher to the state treasurer, who shall draw a warrant against the state wildlife fund in favor of the fund for which the withdrawn lands are held. [1987 c 506 § 45; 1980 c 78 § 57; 1973 c 106 § 35; 1955 c 36 § 77.12.390. Prior: 1947 c 130 § 4; Rem. Supp. 1947 § 8136-13.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.420 Improvement of conditions for growth of game fish. The director may spend moneys to improve natural growing conditions for fish by constructing fishways, installing screens, and removing obstructions to migratory

fish. The eradication of undesirable fish shall be authorized by the commission. The director may enter into cooperative agreements with state, county, municipal, and federal agencies, and with private individuals for these purposes. [1987 c 506 § 46; 1980 c 78 § 59; 1955 c 36 § 77.12.420. Prior: 1947 c 127 § 1; Rem. Supp. 1947 § 5944-1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.425 Director may modify inadequate fishways and protective devices. The director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish protective device required by RCW 77.16.210 and 77.16.220 which device was in existence on September 1, 1963, without cost to the owner for materials and labor. The modification may not materially alter the amount of water flowing through the fishway or fish protective device. Following modification, the fishway or fish protective device shall be maintained at the expense of the person or governmental agency owning the obstruction or water diversion device. [1980 c 78 § 90; 1963 c 152 § 1. Formerly RCW 77.16.221.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Director of fish and wildlife may modify inadequate fishways and fish guards: RCW 75.20.061.

77.12.430 Wildlife restoration—Federal act. The state assents to the act of congress entitled: "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," (50 Stat. 917; 16 U.S.C. Sec. 669). The department shall establish and conduct cooperative wildlife restoration projects, as defined in the act, and shall comply with the act and related rules adopted by the secretary of agriculture. [1980 c 78 § 60; 1955 c 36 § 77.12.430. Prior: 1939 c 140 § 1; RRS § 5855-12.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.440 Fish restoration and management projects—Federal act. The state assents to the act of congress entitled: "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," (64 Stat. 430; 16 U.S.C. Sec. 777). The department shall establish, conduct, and maintain fish restoration and management projects, as defined in the act, and shall comply with the act and related rules adopted by the secretary of the interior. [1993 sp.s. c 2 § 69; 1987 c 506 § 47; 1982 c 26 § 2; 1980 c 78 § 61; 1955 c 36 § 77.12.440. Prior: 1951 c 124 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Intent—1982 c 26: "The legislature recognizes that funds from the federal Dingell-Johnson Act (64 Stat. 430; 16 U.S.C. Sec. 777) are derived from a tax imposed on the sale of recreational fishing tackle, and that these funds are granted to the state for fish restoration and management projects. The intent of this 1982 amendment to RCW 77.12.440 is to provide for the

allocation of the Dingell-Johnson aid for fish restoration and management projects of the department of game and the department of fisheries. Such funds shall be subject to appropriation by the legislature." [1982 c 26 § 1.]

Effective date—1982 c 26: "This act shall take effect on October 1, 1982." [1982 c 26 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.450 Snake river boundary—Cooperation with Idaho for adoption and enforcement of rules regarding wildlife. The commission may cooperate with the Idaho fish and game commission in the adoption and enforcement of rules regarding wildlife on that portion of the Snake river forming the boundary between Washington and Idaho. [1980 c 78 § 62; 1967 c 62 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.470 Snake river boundary—Concurrent jurisdiction of Idaho and Washington courts and law enforcement officers. To enforce RCW 77.12.480 and 77.12.490, courts in the counties contiguous to the boundary waters, wildlife agents, and ex officio wildlife agents have jurisdiction over the boundary waters to the furthest shoreline. This jurisdiction is concurrent with the courts and law enforcement officers of Idaho. [1980 c 78 § 63; 1967 c 62 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.480 Snake river boundary—Honoring licenses to take wildlife of either state. The taking of wildlife from the boundary waters or islands of the Snake river shall be in accordance with the wildlife laws of the respective states. Wildlife agents and ex officio wildlife agents shall honor the license of either state and the right of the holder to take wildlife from the boundary waters and islands in accordance with the laws of the state issuing the license. [1980 c 78 § 64; 1967 c 62 § 4.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.490 Snake river boundary—Purpose—Restrictions. The purpose of RCW 77.12.450 through 77.12.490 is to avoid the conflict, confusion, and difficulty of locating the state boundary in or on the boundary waters and islands of the Snake river. These sections do not allow the holder of a Washington license to fish or hunt on the shoreline, sloughs, or tributaries on the Idaho side, nor allow the holder of an Idaho license to fish or hunt on the shoreline, sloughs, or tributaries on the Washington side. [1980 c 78 § 65; 1967 c 62 § 5.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.530 Hunting and fishing contests—Field trials for dogs—Rules—Limitation. The director shall administer rules adopted by the commission governing the time, place, and manner of holding hunting and fishing contests and competitive field trials involving live wildlife for hunting dogs. The department shall prohibit contests and field trials

that are not in the best interests of wildlife. [1987 c 506 § 48; 1980 c 78 § 67.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Contests and field trials: RCW 77.16.010.

77.12.540 Public shooting grounds—Effect of filing—Use for booming. Upon filing a certificate with the commissioner of public lands that shows that lands will be used for public shooting grounds by the department, the lands shall be withdrawn from sale or lease and then may be used as public shooting grounds under control of the department. The commissioner of public lands may also use the lands for booming purposes. [1980 c 78 § 128; 1955 c 36 § 77.40.080. Prior: 1945 c 179 § 2; Rem. Supp. 1945 § 7993-5b. Formerly RCW 77.40.080.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.550 Tidelands used as public shooting grounds—Diversion. Tidelands granted to the department to be used as public shooting grounds shall revert to the state if used for another purpose. The department shall certify the reversion to the commissioner of public lands who shall then supervise and control the lands as provided in Title 79 RCW. [1980 c 78 § 126; 1955 c 36 § 77.40.050. Prior: 1941 c 190 § 3; Rem. Supp. 1941 § 7993-8. Formerly RCW 77.40.050.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.560 Tidelands used as public shooting grounds—Rules. The commission may adopt rules regarding the use of the tidelands as shooting grounds. [1980 c 78 § 127; 1955 c 36 § 77.40.060. Prior: 1941 c 190 § 4; Rem. Supp. 1941 § 7993-9. Formerly RCW 77.40.060.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.570 Game farm licenses—Rules—Exemption. The commission shall establish the qualifications and conditions for issuing a game farm license. The director shall adopt rules governing the operation of game farms. Private sector cultured aquatic products as defined in RCW 15.85.020 are exempt from regulation under this section. [1987 c 506 § 49; 1985 c 457 § 22; 1980 c 78 § 98; 1975 1st ex.s. c 15 § 2; 1970 ex.s. c 29 § 14; 1955 c 36 § 77.28.020. Prior: 1947 c 275 § 82; Rem. Supp. 1947 § 5992-91. Formerly RCW 77.28.020.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.580 Game farms—Authority to dispose of eggs. A licensed game farmer may purchase, sell, give away, or dispose of the eggs of game birds or game fish lawfully possessed as provided by rule of the director. [1987 c 506 § 50; 1980 c 78 § 99; 1955 c 36 § 77.28.070.]

Prior: 1947 c 275 § 87; Rem. Supp. 1947 § 5992-96. Formerly RCW 77.28.070.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.590 Game farms—Tagging of products—Exemption. Wildlife given away, sold, or transferred by a licensed game farmer shall have attached to each wildlife member, package, or container, a tag, seal, or invoice as required by rule of the director. Private sector cultured aquatic products as defined in RCW 15.85.020 are exempt from regulation under this section. [1987 c 506 § 51; 1985 c 457 § 23; 1980 c 78 § 100; 1955 c 36 § 77.28.080. Prior: 1947 c 275 § 88; Rem. Supp. 1947 § 5992-97. Formerly RCW 77.28.080.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.600 Game farms—Shipping of wildlife—Exemption. A common carrier may transport wildlife shipped by a licensed game farmer if the wildlife is tagged, sealed, or invoiced as provided in RCW 77.12.590. Packages containing wildlife shall have affixed to them tags or labels showing the name of the licensee and the consignee. For purposes of this section, wildlife does not include private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, this exemption from the definition of wildlife applies only if the aquatic products are identified in conformance with those rules. [1985 c 457 § 24; 1980 c 78 § 101; 1955 c 36 § 77.28.090. Prior: 1947 c 275 § 89; Rem. Supp. 1947 § 5992-98. Formerly RCW 77.28.090.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.610 Wildlife check stations—Purpose. The purposes of RCW 77.12.610 through 77.12.630 and 77.16.610 are to facilitate the department's gathering of biological data for managing wildlife resources of this state and to protect wildlife resources by assuring compliance with Title 77 RCW, and rules adopted thereunder, in a manner designed to minimize inconvenience to the public. [1982 c 155 § 1.]

77.12.620 Wildlife check stations—Stopping for inspection. The department is authorized to require hunters and fishermen occupying a motor vehicle approaching or entering a check station to stop and produce for inspection: (1) Any wildlife in their possession; (2) licenses, permits, tags, stamps, or punchcards required under Title 77 RCW, or rules adopted thereunder. For these purposes, the department is authorized to operate check stations which shall be plainly marked by signs, operated by at least one uniformed wildlife agent, and operated in a safe manner. [1982 c 155 § 2.]

77.12.630 Wildlife check stations—Other inspections, powers. The powers conferred by RCW 77.12.610 through 77.12.630 and 77.16.610 are in addition to all other powers conferred by law upon the department. Nothing in RCW 77.12.610 through 77.12.630 and 77.16.610 shall be construed to prohibit the department from operating wildlife information stations at which persons shall not be required to stop and report, or from executing arrests, searches, or seizures otherwise authorized by law. [1982 c 155 § 4.]

77.12.650 Protection of bald eagles and their habitats—Cooperation required. The department shall cooperate with other local, state, and federal agencies and governments to protect bald eagles and their essential habitats through existing governmental programs, including but not limited to:

(1) The natural heritage program managed by the department of natural resources under chapter 79.70 RCW;

(2) The natural area preserve program managed by the department of natural resources under chapter 79.70 RCW;

(3) The shoreline management master programs adopted by local governments and approved by the department of ecology under chapter 90.58 RCW. [1987 c 506 § 52; 1984 c 239 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative declaration—1984 c 239: "The legislature hereby declares that the protection of the bald eagle is consistent with a societal concern for the perpetuation of natural life cycles, the sensitivity and vulnerability of particular rare and distinguished species, and the quality of life of humans." [1984 c 239 § 1.]

77.12.655 Habitat buffer zones for bald eagles—Rules. The department, in accordance with chapter 34.05 RCW, shall adopt and enforce necessary rules defining the extent and boundaries of habitat buffer zones for bald eagles. Rules shall take into account the need for variation of the extent of the zone from case to case, and the need for protection of bald eagles. The rules shall also establish guidelines and priorities for purchase or trade and establishment of conservation easements and/or leases to protect such designated properties. The department shall also adopt rules to provide adequate notice to property owners of their options under RCW 77.12.650 through 77.12.655. [1990 c 84 § 3; 1984 c 239 § 3.]

Legislative declaration—1984 c 239: See note following RCW 77.12.650.

77.12.670 Migratory waterfowl stamp—Deposit and use of revenues. The migratory waterfowl stamp to be produced by the department shall use the design as provided by the migratory waterfowl art committee.

All revenue derived from the sale of the stamps by the department shall be deposited in the state wildlife fund and shall be used only for the cost of printing and production of the stamp and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state and for the enhancement, protection, and propagation of migratory waterfowl in the state. Acquisition shall include but not be limited to the acceptance of gifts of real estate or any interest therein or the rental, lease, or purchase of real

estate or any interest therein. If the department acquires any fee interest, leasehold, or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, insure that the deed or other instrument creating the interest allows such access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to insure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission.

The department may produce migratory waterfowl stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the migratory waterfowl art committee for sale to the public. [1987 c 506 § 53; 1985 c 243 § 4.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.680 Migratory waterfowl art committee—Membership—Terms—Vacancies—Chairman—Review of expenditures—Compensation. (1) There is created the migratory waterfowl art committee which shall be composed of nine members.

(2)(a) The committee shall consist of one member appointed by the governor, six members appointed by the director, one member appointed by the chairman of the state arts commission, and one member appointed by the director of the department of agriculture.

(b) The member appointed by the director of the department of agriculture shall represent state-wide farming interests.

(c) The member appointed by the chairman of the state arts commission shall be knowledgeable in the area of fine art reproduction.

(d) The members appointed by the governor and the director shall be knowledgeable about waterfowl and waterfowl management. The six members appointed by the director shall represent, respectively:

- (i) An eastern Washington sports group;
- (ii) A western Washington sports group;
- (iii) A group with a major interest in the conservation and propagation of migratory waterfowl;
- (iv) A state-wide conservation organization;
- (v) A state-wide sports hunting group; and
- (vi) The general public.

The members of the committee shall serve three-year staggered terms and at the expiration of their term shall serve until qualified successors are appointed. Of the nine members, three shall serve initial terms of four years, three shall serve initial terms of three years, and three shall serve initial terms of two years. The appointees of the governor, the chairman of the state arts commission, and the director of agriculture shall serve the initial terms of four years. Vacancies shall be filled for unexpired terms consistent with this section. A chairman shall be elected annually by the committee. The committee shall review the director's expenditures of the previous year of both the stamp money

and the prints and related artwork money. Members of the committee shall serve without compensation. [1987 c 506 § 54; 1985 c 243 § 5.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.690 Migratory waterfowl art committee—Duties—Deposit and use of funds—Audits. The migratory waterfowl art committee is responsible for the selection of the annual migratory waterfowl stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife fund. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission and to the natural resources committees of the house and senate. [1987 c 506 § 55; 1985 c 243 § 6.]

Legislative findings and Intent—1987 c 506: See note following RCW 77.04.020.

77.12.710 Game fish production—Double by year 2000. The legislature hereby directs the department to determine the feasibility and cost of doubling the state-wide game fish production by the year 2000. The department shall seek to equalize the effort and investment expended on anadromous and resident game fish programs. The department shall provide the legislature with a specific plan for legislative approval that will outline the feasibility of increasing game fish production by one hundred percent over current levels by the year 2000. The plan shall contain specific provisions to increase both hatchery and naturally spawning game fish to a level that will support the production goal established in this section consistent with department policies. Steelhead trout, searun cutthroat trout, resident trout, and warmwater fish producing areas of the state shall be included in the plan. The department shall provide the plan to the house of representatives and senate

ways and means, environment and natural resources, environmental affairs, fisheries and wildlife, and natural resources committees by December 31, 1990.

The plan shall include the following critical elements:

- (1) Methods of determining current catch and production, and catch and production in the year 2000;
- (2) Methods of involving fishing groups, including Indian tribes, in a cooperative manner;
- (3) Methods for using low capital cost projects to produce game fish as inexpensively as possible;
- (4) Methods for renovating and modernizing all existing hatcheries and rearing ponds to maximize production capability;
- (5) Methods for increasing the productivity of natural spawning game fish;
- (6) Application of new technology to increase hatchery and natural productivity;
- (7) Analysis of the potential for private contractors to produce game fish for public fisheries;
- (8) Methods to optimize public volunteer efforts and cooperative projects for maximum efficiency;
- (9) Methods for development of trophy game fish fisheries;
- (10) Elements of coordination with the Pacific Northwest Power Council programs to ensure maximum Columbia river benefits;
- (11) The role that should be played by private consulting companies in developing and implementing the plan;
- (12) Coordination with federal fish and wildlife agencies, Indian tribes, and department fish production programs;
- (13) Future needs for game fish predator control measures;
- (14) Development of disease control measures;
- (15) Methods for obtaining access to waters currently not available to anglers; and
- (16) Development of research programs to support game fish management and enhancement programs.

The department, in cooperation with the department of revenue, shall assess various funding mechanisms and make recommendations to the legislature in the plan. The department, in cooperation with the department of community, trade, and economic development, shall prepare an analysis of the economic benefits to the state that will occur when the game fish production is increased by one hundred percent in the year 2000. [1995 c 399 § 208; 1993 sp.s. c 2 § 70; 1990 c 110 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Finding—1990 c 110: "The legislature finds that the anadromous and resident game fish resource of the state can be greatly increased to benefit recreational fishermen and the economy of the state. Investments in the increase of anadromous and resident game fish stocks will provide benefits many times the cost of the program and will act as a catalyst for many additional benefits in the tourism and associated industries, while enhancing the livability of the state." [1990 c 110 § 1.]

77.12.720 Firearms range account—Grant program—Rules. The firearms range account is hereby created in the state general fund. Moneys in the account shall be subject to legislative appropriation and shall be used for purchase and development of land, construction or improvement of range facilities, including fixed structure construc-

tion or remodeling, equipment purchase, safety or environmental improvements, noise abatement, and liability protection for public and nonprofit firearm range training and practice facilities.

Grant funds shall not be used for expendable shooting supplies, or normal operating expenses. In making grants, the interagency committee for outdoor recreation shall give priority to projects for noise abatement or safety improvement. Grant funds shall not supplant funds for other organization programs.

The funds will be available to nonprofit shooting organizations, school districts, and state, county, or local governments on a match basis. All entities receiving matching funds must be open on a regular basis and usable by law enforcement personnel or the general public who possess Washington concealed pistol licenses or Washington hunting licenses or who are enrolled in a firearm safety course.

Applicants for a grant from the firearms range account shall provide matching funds in either cash or in-kind contributions. The match must represent one dollar in value for each one dollar of the grant except that in the case of a grant for noise abatement or safety improvements the match must represent one dollar in value for each two dollars of the grant. In-kind contributions include but are not limited to labor, materials, and new property. Existing assets and existing development may not apply to the match.

Applicants other than school districts or local or state government must be registered as a nonprofit or not-for-profit organization with the Washington secretary of state. The organization's articles of incorporation must contain provisions for the organization's structure, officers, legal address, and registered agent.

Organizations requesting grants must provide the hours of range availability for public and law enforcement use. The fee structure will be submitted with the grant application.

Any nonprofit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted.

Entities receiving grants must make the facilities for which grant funding is received open for hunter safety education classes and firearm safety classes on a regular basis for no fee.

Government units or school districts applying for grants must open their range facility on a regular basis for hunter safety education classes and firearm safety classes.

The interagency committee for outdoor recreation shall adopt rules to implement chapter 195, Laws of 1990, pursuant to chapter 34.05 RCW. [1996 c 96 § 1; 1994 sp.s. c 7 § 443; 1990 c 195 § 2.]

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

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

Findings—1990 c 195: "Firearms are collected, used for hunting, recreational shooting, and self-defense, and firearm owners as well as bow users need safe, accessible areas in which to shoot their equipment. Approved shooting ranges provide that opportunity, while at the same time, promote public safety. Interest in all shooting sports has increased while

safe locations to shoot have been lost to the pressures of urban growth." [1990 c 195 § 1.]

77.12.730 Firearms range advisory committee. (1) A ten-member firearms range advisory committee is hereby created to provide advice and counsel to the interagency committee for outdoor recreation. The members shall be appointed by the director of the interagency committee for outdoor recreation from the following groups:

- (a) Law enforcement;
- (b) Washington military department;
- (c) Black powder shooting sports;
- (d) Rifle shooting sports;
- (e) Pistol shooting sports;
- (f) Shotgun shooting sports;
- (g) Archery shooting sports;
- (h) Hunter education;
- (i) Hunters; and
- (j) General public.

(2) The firearms range advisory committee members shall serve two-year terms with five new members being selected each year beginning with the third year of the committee's existence. The firearms range advisory committee members shall not receive compensation from the firearms range account. However, travel and per diem costs shall be paid consistent with regulations for state employees.

(3) The interagency committee for outdoor recreation shall provide administrative, operational, and logistical support for the firearms range advisory committee. Expenses directly incurred for supporting this program may be charged by the interagency committee for outdoor recreation against the firearms range account. Expenses shall not exceed ten percent of the yearly income for the range account.

(4) The interagency committee for outdoor recreation shall in cooperation with the firearms range advisory committee:

- (a) Develop an application process;
- (b) Develop an audit and accountability program;
- (c) Screen, prioritize, and approve grant applications; and
- (d) Monitor compliance by grant recipients.

(5) The department of natural resources, the department of fish and wildlife, and the Washington military department are encouraged to provide land, facilitate land exchanges, and support the development of shooting range facilities. [1993 sp.s. c 2 § 71; 1990 c 195 § 3.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—1990 c 195: See note following RCW 77.12.720.

77.12.740 Firearms range account—Gifts and grants. The interagency committee for outdoor recreation may accept gifts and grants upon such terms as the committee shall deem proper. All monetary gifts and grants shall be deposited in the firearms range account of the general fund. [1990 c 195 § 4.]

Findings—1990 c 195: See note following RCW 77.12.720.

77.12.750 Senior environmental corps—Department powers and duties. (1) The department shall have the following powers and duties in carrying out its responsibilities for the senior environmental corps created under RCW 43.63A.247:

- Appoint a representative to the coordinating council;
- Develop project proposals;
- Administer project activities within the agency;
- Develop appropriate procedures for the use of volunteers;

- Provide project orientation, technical training, safety training, equipment, and supplies to carry out project activities;

- Maintain project records and provide project reports;
- Apply for and accept grants or contributions for corps approved projects; and

- With the approval of the council, enter into memoranda of understanding and cooperative agreements with federal, state, and local agencies to carry out corps approved projects.

(2) The department shall not use corps volunteers to displace currently employed workers. [1993 sp.s. c 2 § 72; 1992 c 63 § 13.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1992 c 63: See note following RCW 43.63A.240.

77.12.760 Steelhead trout fishery. Steelhead trout shall be managed solely as a recreational fishery for non-Indian fishermen under the rule-setting authority of the fish and wildlife commission.

Commercial non-Indian steelhead fisheries are not authorized. [1993 sp.s. c 2 § 78.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

77.12.770 Hunting big game—Auction or raffle—Procedure. (1) The commission in consultation with the director may authorize hunting of big game animals and wild turkeys through auction. The department may conduct the auction for the hunt or contract with a nonprofit wildlife conservation organization to conduct the auction for the hunt.

(2) The commission in consultation with the director may authorize hunting of up to a total of fifteen big game animals and wild turkeys per year through raffle. The department may conduct raffles or contract with a nonprofit wildlife conservation organization to conduct raffles for hunting these animals. In consultation with the gambling commission, the director may adopt rules for the implementation of raffles involving hunting.

(3) The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified.

(4) After deducting the expenses of conducting an auction or raffle, any revenues retained by a nonprofit organization, as specified under contract with the department,

shall be devoted solely for wildlife conservation, consistent with its qualification as a bona fide nonprofit organization for wildlife conservation.

(5) The department's share of revenues from auctions and raffles shall be deposited in the state wildlife fund. The revenues shall be used to improve the habitat, health, and welfare of the species auctioned or raffled and shall supplement, rather than replace, other funds budgeted for management of that species. The commission may solicit input from groups or individuals with special interest in and expertise on a species in determining how to use these revenues.

(6) A nonprofit wildlife conservation organization may petition the commission to authorize an auction or raffle for a special hunt for big game animals and wild turkeys. [1996 c 101 § 5.]

Findings—1996 c 101: "The legislature finds that it is in the best interest of recreational hunters to provide them with the variety of hunting opportunities provided by auctions and raffles. Raffles provide an affordable opportunity for most hunters to participate in special hunts for big game animals and wild turkeys. The legislature also finds that wildlife management and recreation are not adequately funded and that such auctions and raffles can increase revenues to improve wildlife management and recreation." [1996 c 101 § 1.]

77.12.780 Private lands—Raffle authorization to hunt big game. If a private entity has a private lands wildlife management area agreement in effect with the department, the commission may authorize the private entity to conduct raffles for access to hunt for big game animals and wild turkeys to meet the conditions of the agreement. The private entity shall comply with all applicable rules adopted under RCW 77.12.770 for the implementation of raffles; however, raffle hunts conducted pursuant to this section shall not be counted toward the number of raffle hunts the commission may authorize under RCW 77.12.770. The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified. [1996 c 101 § 6.]

Findings—1996 c 101: See note following RCW 77.12.770.

Chapter 77.16

PROHIBITED ACTS AND PENALTIES

Sections	
77.16.010	Hunting and fishing contests—Field trials for dogs—Permit—Rules.
77.16.020	Violations—Closed season, waters, areas—Bag limits—Special licenses, tags, stamps, or catch record cards.
77.16.040	Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers.
77.16.050	Spotlighting big game—Prima facie evidence.
77.16.060	Using nets, unauthorized devices—Returning game fish—Use of landing nets.
77.16.070	Hunting while intoxicated.
77.16.080	Laying out poison, etc., endangering wildlife—Exception.
77.16.090	Waste of wildlife.
77.16.095	Mutilation of wildlife, hampering identification.
77.16.100	Use of dogs—Public nuisance, when.
77.16.110	Weapons, traps, and dogs on game reserves.
77.16.120	Taking of protected wildlife—Destruction of nests or eggs.

(1996 Ed.)

77.16.130	Resisting or obstructing officers.
77.16.135	Assault on wildlife agent or other law enforcement—Revoke licenses and privileges.
77.16.150	Releasing wildlife—Planting aquatic plants, seeds.
77.16.160	Damaging or interfering with fish ladders, guards, screens, etc.
77.16.170	Interfering with another person's traps—Identification of traps—Disclosure of identities.
77.16.180	Damaging signs.
77.16.190	Unlawful posting of land.
77.16.210	Fishways to be provided and maintained.
77.16.220	Diversion of water—Screen, bypass required.
77.16.250	Loaded firearms in vehicles.
77.16.260	Shooting firearm from public highway.
77.16.290	Law enforcement officers, exemption.
77.16.310	Unlawful purchase or possession of license, permit, tag, stamp, or punchcard.
77.16.320	Albino animals—Penalties for taking, dealing.
77.16.330	Hunting migratory waterfowl without stamp.
77.16.340	Obstructing the taking of fish or wildlife—Penalty—Defenses.
77.16.350	Obstructing the taking of fish or wildlife—Civil action.
77.16.610	Wildlife check stations—Violations.

77.16.010 Hunting and fishing contests—Field trials for dogs—Permit—Rules. It is unlawful to promote, conduct, hold, or sponsor a contest for the hunting or fishing of wildlife or a competitive field trial involving live wildlife for hunting dogs without first obtaining a hunting or fishing contest permit. Contests and field trials shall be held in accordance with established rules. [1987 c 506 § 58; 1980 c 78 § 69; 1955 c 36 § 77.16.010. Prior: 1947 c 275 § 39; Rem. Supp. 1947 § 5992-49.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Contests and field trials: RCW 77.12.530.

77.16.020 Violations—Closed season, waters, areas—Bag limits—Special licenses, tags, stamps, or catch record cards. (1) It is unlawful to hunt, fish, or possess a game animal, game bird, or game fish during closed season for that game animal, game bird, or game fish except as provided in RCW 77.12.105 or *77.12.265.

(2) It is unlawful to kill, take, catch, possess, or control a game animal, game bird, or game fish in excess of the number fixed as the bag limit for that game animal, game bird, or game fish.

(3) It is unlawful to hunt within a game reserve or to fish for game fish within closed waters.

(4) It is unlawful to hunt wild birds or wild animals within a closed area except as authorized by rule of the commission.

(5) It is unlawful to hunt or fish for wildlife, practice taxidermy for profit, deal in raw furs for profit, act as a fishing guide, or operate a game farm, stock game fish, or collect wildlife for research or display, without having in possession the license, permit, tag, stamp, or catch record card required by chapter 77.32 RCW or rule of the department. The activities described in this subsection shall be conducted in accordance with rules adopted pursuant to this title.

(6) For the purposes of this section, the department shall not consider leg length or bill length of dusky Canada geese (*Branta canadensis occidentalis*). [1996 c 207 § 3; 1987 c

506 § 59; 1983 c 3 § 196; 1981 c 310 § 3; 1980 c 78 § 70; 1977 c 44 § 1; 1955 c 36 § 77.16.020. Prior: 1947 c 275 § 41; Rem. Supp. 1947 § 5992-50.]

*Reviser's note: RCW 77.12.265 was repealed by 1996 c 54 § 12, effective July 1, 1996. See chapter 77.36 RCW.

Intent—1996 c 207: See note following RCW 77.08.010.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.040 Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers. Except as authorized by law or rule, it is unlawful to bring into this state, offer for sale, sell, possess, exchange, buy, transport, or ship wildlife or articles made from an endangered species. It is unlawful for a common or contract carrier knowingly to ship or receive for shipment wildlife or articles made from an endangered species. [1987 c 506 § 60; 1980 c 78 § 72; 1971 ex.s. c 166 § 4; 1961 c 75 § 1; 1955 c 36 § 77.16.040. Prior: 1947 c 275 § 43; Rem. Supp. 1947 § 5992-52.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.050 Spotighting big game—Prima facie evidence. It is unlawful to hunt big game with a spotlight or other artificial light. It is prima facie evidence of a violation of this section to be found with a spotlight or other artificial light and with a firearm, bow and arrow, or crossbow, after sunset, in a place where big game may reasonably be expected. [1980 c 78 § 73; 1955 c 36 § 77.16.050. Prior: 1947 c 275 § 44; Rem. Supp. 1947 § 5992-53.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.060 Using nets, unauthorized devices—Returning game fish—Use of landing nets. It is unlawful to lay, set, or use a net or other device capable of taking game fish in the waters of this state except as authorized by the commission or director. Game fish taken incidental to a lawful season established by the director shall be returned immediately to the water.

A landing net may be used to land fish otherwise legally hooked. [1993 sp.s. c 2 § 73; 1987 c 506 § 61; 1980 c 78 § 74; 1955 c 36 § 77.16.060. Prior: 1947 c 275 § 45; Rem. Supp. 1947 § 5992-54.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.070 Hunting while intoxicated. It is unlawful to hunt while under the influence of intoxicating liquor or

drugs. [1980 c 78 § 75; 1955 c 36 § 77.16.070. Prior: 1947 c 275 § 45a; Rem. Supp. 1947 § 5992-55.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.080 Laying out poison, etc., endangering wildlife—Exception. It is unlawful to lay, set, or use a drug, explosive, poison, or other deleterious substance that may endanger, injure, or kill wildlife except as authorized by law or rules adopted pursuant to this title. [1987 c 506 § 62; 1980 c 78 § 76; 1955 c 36 § 77.16.080. Prior: 1947 c 275 § 46; Rem. Supp. 1947 § 5992-56.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.090 Waste of wildlife. It is unlawful for a person who kills or possesses game animals, game birds, or game fish to allow them to needlessly go to waste. [1980 c 78 § 77; 1955 c 36 § 77.16.090. Prior: 1947 c 275 § 47; Rem. Supp. 1947 § 5992-57.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.095 Mutilation of wildlife, hampering identification. It is unlawful to mutilate wildlife so that the size, species, or sex cannot be determined visually in the field or while being transported. The director may prescribe specific criteria for field identification to satisfy this section. [1987 c 506 § 63; 1980 c 78 § 78.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.100 Use of dogs—Public nuisance, when. It is unlawful for the owner or a person harboring a dog to directly or negligently permit the dog to pursue or injure deer or elk or to accompany a person who is hunting deer or elk.

During the closed season for a species of game animal or game bird, a dog found pursuing that species, molesting its young, or destroying the nest of a game bird may be declared a public nuisance. [1980 c 78 § 79; 1977 ex.s. c 275 § 1; 1955 c 36 § 77.16.100. Prior: 1947 c 275 § 48; Rem. Supp. 1947 § 5992-58.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Dogs: Chapter 16.08 RCW.

77.16.110 Weapons, traps, and dogs on game reserves. It is unlawful to carry firearms, other hunting weapons, or traps or to allow directly or negligently a dog upon a game reserve, except on public highways or as authorized by rule of the director. [1987 c 506 § 64; 1980 c 78 § 80; 1955 c 36 § 77.16.110. Prior: 1947 c 275 § 50; Rem. Supp. 1947 § 5992-59.]

Legislative findings and Intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.120 Taking of protected wildlife—Destruction of nests or eggs. Except as authorized by rule of the commission, it is unlawful to hunt, fish for, possess, or control protected wildlife, or endangered species or to destroy or possess the nests or eggs of game birds or protected wildlife. [1980 c 78 § 81; 1955 c 36 § 77.16.120. Prior: 1947 c 275 § 51; Rem. Supp. 1947 § 5992-60.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.130 Resisting or obstructing officers. It is unlawful to resist or obstruct wildlife agents or ex officio wildlife agents in the discharge of their duties while enforcing the law or rules adopted pursuant to this title. [1987 c 506 § 65; 1980 c 78 § 82; 1955 c 36 § 77.16.130. Prior: 1947 c 275 § 52; Rem. Supp. 1947 § 5992-61.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.135 Assault on wildlife agent or other law enforcement—Revoke licenses and privileges. (1) The commission shall revoke all licenses and privileges extended under Title 77 RCW of a person convicted of assault on a state wildlife agent or other law enforcement officer provided that:

(a) The wildlife agent or other law enforcement officer was on duty at the time of the assault; and

(b) The wildlife agent or other law enforcement officer was enforcing the provisions of Title 77 RCW.

(2) For the purposes of this section, the definition of assault includes:

- (a) RCW 9A.32.030; murder in the first degree;
- (b) RCW 9A.32.050; murder in the second degree;
- (c) RCW 9A.32.060; manslaughter in the first degree;
- (d) RCW 9A.32.070; manslaughter in the second degree;
- (e) RCW 9A.36.011; assault in the first degree;
- (f) RCW 9A.36.021; assault in the second degree; and
- (g) RCW 9A.36.031; assault in the third degree.

(3) For the purposes of this section, a conviction includes:

- (a) A determination of guilt by the court;
- (b) The entering of a guilty plea to the charge or charges by the accused;
- (c) A forfeiture of bail or a vacation of bail posted to the court; or
- (d) The imposition of a deferred or suspended sentence by the court.

(4) No license described under Title 77 RCW shall be reissued to a person violating this section for a minimum of ten years, at which time a person may petition the director for a reinstatement of his or her license or licenses. The ten-year period shall be tolled during any time the convicted person is incarcerated in any state or local correctional or penal institution, in community supervision, or home detention for an offense under this section. Upon review by the director, and if all provisions of the court that imposed sentencing have been completed, the director may reinstate in whole or in part the licenses and privileges under Title 77 RCW. [1995 1st sp.s. c 2 § 43 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 74; 1991 c 211 § 1.]

(1996 Ed.)

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

77.16.150 Releasing wildlife—Planting aquatic plants, seeds. Except as authorized by the director, consistent with criteria established by the commission, it is unlawful to release wildlife or to plant aquatic plants or their seeds within the state. [1987 c 506 § 66; 1980 c 78 § 83; 1955 c 36 § 77.16.150. Prior: 1951 c 126 § 1; 1947 c 275 § 54; Rem. Supp. 1947 § 5992-63.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.160 Damaging or interfering with fish ladders, guards, screens, etc. It is unlawful to damage or interfere with a fish ladder, guard, screen, stop, protective device, bypass, or trap operated by the department. [1980 c 78 § 84; 1955 c 36 § 77.16.160. Prior: 1947 c 275 § 55; Rem. Supp. 1947 § 5992-64.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.170 Interfering with another person's traps—Identification of traps—Disclosure of identities. It is unlawful to take a wild animal from another person's trap without permission, or to spring, pull up, damage, possess, or destroy the trap; however, it is not unlawful for a property owner, lessee, or tenant to remove a trap placed on the owner's, lessee's, or tenant's property by a trapper.

Trappers shall attach to the chain of their traps or devices a legible metal tag with either the department identification number of the trapper or the name and address of the trapper in English letters not less than one-eighth inch in height.

When an individual presents a trapper identification number to the department and requests identification of the trapper, the department shall provide the individual with the name and address of the trapper. Prior to disclosure of the trapper's name and address, the department shall obtain the name and address of the requesting individual in writing and after disclosing the trapper's name and address to the requesting individual, the requesting individual's name and address shall be disclosed in writing to the trapper whose name and address was disclosed. [1993 sp.s. c 2 § 75; 1988 c 36 § 51; 1987 c 372 § 1; 1980 c 78 § 85; 1955 c 36 § 77.16.170. Prior: 1947 c 275 § 56; Rem. Supp. 1947 § 5992-65.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.180 Damaging signs. It is unlawful to remove, possess, or damage printed matter or signs placed by

authority of the director. [1987 c 506 § 67; 1980 c 78 § 86; 1955 c 36 § 77.16.180. Prior: 1947 c 275 § 57; Rem. Supp. 1947 § 5992-66.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.190 Unlawful posting of land. It is unlawful for a person to wilfully post signs or warn against or otherwise prevent hunting or fishing on any land not owned or leased by that person. [1980 c 78 § 87; 1955 c 36 § 77.16.190. Prior: 1947 c 275 § 58; Rem. Supp. 1947 § 5992-67.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.210 Fishways to be provided and maintained. Persons or government agencies managing, controlling, or owning a dam or other obstruction across a river or stream shall construct, maintain, and repair durable fishways and fish protective devices that allow the free passage of game fish around the obstruction. The fishways and fish protective devices shall be provided with sufficient water to insure the free passage of fish. [1980 c 78 § 88; 1955 c 36 § 77.16.210. Prior: 1947 c 275 § 60; Rem. Supp. 1947 § 5992-69.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.220 Diversion of water—Screen, bypass required. It is unlawful to divert water from a lake, river, or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from immediately in front of the fish guard or screen to the waters of origin. A person who is *now otherwise lawfully diverting water from a lake, river or stream shall not be deemed guilty of a violation of this section.

Plans for the fish guard, screen, and bypass shall be approved by the director prior to construction. The installation shall be approved by the director prior to the diversion of water.

The director may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass. [1980 c 78 § 89; 1955 c 36 § 77.16.220. Prior: 1947 c 275 § 61; Rem. Supp. 1947 § 5992-70.]

***Reviser's note:** The phrase "now otherwise lawfully diverting water" first appears in 1947 c 275 § 61.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.250 Loaded firearms in vehicles. Except as provided in RCW 77.16.290 and 77.32.238, it is unlawful to carry, transport, convey, possess, or control in or on a motor vehicle a shotgun or rifle containing shells or cartridges in the magazine or chamber, or a muzzle-loading firearm loaded and capped or primed. [1989 c 297 § 5; 1980 c 78 § 93; 1955 c 36 § 77.16.250. Prior: 1947 c 126 § 1; Rem. Supp. 1947 § 2545-1.]

[Title 77 RCW—page 22]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.260 Shooting firearm from public highway. Except as provided in RCW 77.16.290, it is unlawful to shoot a firearm from, across, or along the maintained portion of a public highway. [1980 c 78 § 94; 1955 c 85 § 1; 1955 c 36 § 77.16.260. Prior: 1947 c 126 § 2; Rem. Supp. 1947 § 2545-2.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.290 Law enforcement officers, exemption. Law enforcement officers authorized to carry firearms are exempt from RCW 77.16.250 and 77.16.260. [1994 sp.s. c 7 § 444; 1980 c 78 § 95; 1955 c 36 § 77.16.290. Prior: 1947 c 126 § 5; Rem. Supp. 1947 § 2545-5.]

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

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

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.310 Unlawful purchase or possession of license, permit, tag, stamp, or punchcard. It is unlawful to purchase, obtain, or possess or to attempt to purchase or obtain a license, permit, or tag required by this title:

- (1) By using false information; or
- (2) After notice of the revocation or forfeiture of an existing license, permit, or tag, except that a person may purchase a license that does not grant the privilege that was revoked; or
- (3) In excess of one license, permit, tag, stamp, or punchcard for a license year except as authorized by RCW 77.32.256 or other law or rule of the commission. [1981 c 310 § 4; 1980 c 78 § 125; 1979 ex.s. c 127 § 1. Formerly RCW 77.32.300.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.320 Albino animals—Penalties for taking, dealing. Except as authorized by law or rules adopted pursuant to this title, it is unlawful to hunt, offer for sale, sell, possess, exchange, buy, transport, or ship an albino wild animal. [1987 c 506 § 68; 1981 c 310 § 5; 1980 c 44 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.16.330 Hunting migratory waterfowl without stamp. It is unlawful for any person sixteen years of age or older to hunt any migratory waterfowl without first obtaining a migratory waterfowl stamp as required by RCW 77.32.350. [1987 c 506 § 104; 1985 c 243 § 3.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.16.340 Obstructing the taking of fish or wildlife—Penalty—Defenses. (1) A person commits the crime of obstructing the taking of fish or wildlife if the person:

- (a) Harasses, drives, or disturbs fish or wildlife with the intent of disrupting lawful pursuit or taking thereof; or
- (b) Harasses, interferes with, or intimidates an individual engaged in the lawful taking of fish or wildlife or lawful predator control.

(2) Violation of this section is a gross misdemeanor under RCW 77.21.010.

(3) It is a defense to any prosecution under subsection (1) of this section, if the person charged:

- (a) Interferes with any person engaged in hunting outside legally established hunting seasons;
- (b) Is preventing or attempting to prevent the injury or killing of a protected wildlife species, as defined by this title;
- (c) Is preventing or attempting to prevent unauthorized trespass on private property; or
- (d) Is defending oneself or another person from bodily harm or property damage by a person attempting to prevent hunting in a legally established hunting season. [1988 c 265 § 1.]

Effective date—1988 c 265: "This act shall take effect July 1, 1988." [1988 c 265 § 5.]

77.16.350 Obstructing the taking of fish or wildlife—Civil action. Any person who is damaged by any act prohibited in RCW 77.16.340 may bring a civil action to enjoin further violations, and recover damages sustained, including a reasonable attorney's fee. The trial court may increase the award of damages to an amount not to exceed three times the damages sustained. A party seeking civil damages under this section may recover upon proof of a violation of the provisions of RCW 77.16.340 by a preponderance of the evidence. The state of Washington may bring a civil action to enjoin violations of RCW 77.16.340. [1988 c 265 § 2.]

Effective date—1988 c 265: See note following RCW 77.16.340.

77.16.610 Wildlife check stations—Violations. It is unlawful for any hunter or fisherman approaching or entering a check station to fail to:

- (1) Obey check station signs;
- (2) Stop and report at a check station, when directed to do so by a uniformed wildlife agent; or
- (3) Produce for inspection, when requested to do so by a wildlife agent: (a) Wildlife; or (b) licenses, permits, tags, stamps, or punchcards required under Title 77 RCW, or rules adopted thereunder. [1982 c 155 § 3.]

Chapter 77.17

WILDLIFE VIOLATOR COMPACT

Sections

- 77.17.010 Wildlife violator compact—Established.
- 77.17.020 Licensing authority defined.
- 77.17.030 Administration facilitation.

77.17.010 Wildlife violator compact—Established. The wildlife violator compact is hereby established in the form substantially as follows, and the Washington state

(1996 Ed.)

department of fish and wildlife is authorized to enter into such compact on behalf of the state with all other jurisdictions legally joining therein:

ARTICLE I FINDINGS, DECLARATION OF POLICY, AND PURPOSE

(a) The party states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance, or administrative rule relating to the management of those resources.

(3) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

- (i) Must post collateral or bond to secure appearance for a trial at a later date; or
- (ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or
- (iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to ensure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

ARTICLE II DEFINITIONS

Unless the context requires otherwise, the definitions in this article apply through this compact and are intended only for the implementation of this compact:

(a) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a

penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the party state which issues a wildlife citation to the violator.

(h) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(i) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(l) "State" means any state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(m) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(q) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

ARTICLE III PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this article, if the officer receives the person's personal recog-

nizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE V RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

ARTICLE VI APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the party states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VIII ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the state is empowered to become a party to this compact;

(ii) Agreement to comply with the terms and provisions of the compact; and

(iii) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than sixty days after notice has been given by the chairperson of the board of compact administrators or by the secretariat of the board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

ARTICLE IX AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairperson within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

ARTICLE X CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. 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, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, 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.

ARTICLE XI TITLE

This compact shall be known as the wildlife violator compact. [1994 c 264 § 55; 1993 c 82 § 1.]

Revoked licenses—Application—1993 c 82: "The provisions of this compact shall also apply to individuals whose licenses under Title 77 RCW are currently in revoked status." [1993 c 82 § 4.]

77.17.020 Licensing authority defined. For purposes of Article VII of RCW 77.17.010, the term "licensing authority," with reference to this state, means the department. The director is authorized to appoint a compact administrator. [1994 c 264 § 56; 1993 c 82 § 2.]

Revoked licenses—Application—1993 c 82: See note following RCW 77.17.010.

77.17.030 Administration facilitation. The director shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the compact. [1994 c 264 § 57; 1993 c 82 § 3.]

Revoked licenses—Application—1993 c 82: See note following RCW 77.17.010.

Chapter 77.18 GAME FISH MITIGATION

Sections

77.18.005	Public interest declaration.
77.18.010	Definitions.
77.18.020	Specifications—Purchases from aquatic farmers.
77.18.030	Purchases from aquatic farmers for stocking purposes.

77.18.005 Public interest declaration. The legislature declares that the public and private propagation, production, protection, and enhancement of fish is in the public interest. [1991 c 253 § 1.]

77.18.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of fish and wildlife.

(2) "Contract" means an agreement setting at a minimum, price, quantity of fish to be delivered, time of delivery, and fish health requirements.

(3) "Fish health requirements" means those site specific fish health and genetic requirements actually used by the department of fish and wildlife in fish stocking.

(4) "Aquatic farmer" means a private sector person who commercially farms and manages private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(5) "Person" means a natural person, corporation, trust, or other legal entity. [1993 sp.s. c 2 § 76; 1991 c 253 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

77.18.020 Specifications—Purchases from aquatic farmers. If the department requires, pursuant to its authority relative to environmental permits or licenses, that resident hatchery game fish be stocked by the permittee or licensee for mitigation of environmental damage, the department shall specify the pounds or numbers, species, stock, and/or race of resident game fish that are to be provided. The department shall offer the permittee or licensee the option of purchasing under contract from aquatic farmers in Washington, those game fish, unless the fish specified by the department are not available from Washington growers. [1991 c 253 § 3.]

77.18.030 Purchases from aquatic farmers for stocking purposes. Any agency of state or federal government, political subdivision of the state, private or public utility company, corporation, or sports group, or any purchaser of fish under RCW 77.18.020 may purchase resident game fish from an aquatic farmer for stocking purposes if

permit requirements of this title and the department have been met. [1991 c 253 § 4.]

Chapter 77.21

PENALTIES—PROCEEDINGS

Sections

77.21.010	Penalties—Confiscated articles and devices, disposal—Placing traps on private property—Jurisdiction of courts.
77.21.020	Revocation of hunting license for big game violation—Subsequent issuance—Appeal.
77.21.030	Revocation for shooting person or livestock—Subsequent issuance.
77.21.040	Disposition of forfeited wildlife and articles.
77.21.060	License forfeiture—Issuance prohibited.
77.21.070	Illegal possession of wildlife—Reimbursement to state—Amounts—Bail.
77.21.080	Wildlife conservation reward fund.
77.21.090	Citations from wildlife violator compact party state—Failure to comply.

77.21.010 Penalties—Confiscated articles and devices, disposal—Placing traps on private property—Jurisdiction of courts. (1) A person violating RCW 77.16.040, 77.16.050, 77.16.060, 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving 77.16.210, 77.16.220, 77.16.310, 77.16.320, 77.16.340, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving big game or an endangered species is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both the fine and imprisonment. Each subsequent violation within a five-year period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020 or 77.16.120 involving big game or an endangered species, as defined by the commission under the authority of RCW 77.04.090, shall be prosecuted and punished as a class C felony as defined in RCW 9A.20.020. In connection with each such felony prosecution, the director shall provide the court with an inventory of all articles or devices seized under this title in connection with the violation. Inventoried articles or devices shall be disposed of pursuant to RCW 77.21.040.

(2) A person violating or failing to comply with this title or rules adopted pursuant to this title for which no penalty is otherwise provided is guilty of a misdemeanor and shall be punished for each offense by a fine of five hundred dollars or by imprisonment for not more than ninety days in the county jail or by both the fine and imprisonment. The commission may provide, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW.

(3) A person placing traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner, is guilty of the misdemeanor of trespass as defined and established in RCW 9A.52.010 and 9A.52.080 and shall be punished for each offense by a fine of not less than two hundred fifty dollars.

(4) Persons convicted of a violation shall pay the costs of prosecution and the penalty assessment in addition to the fine or imprisonment.

(5) The unlawful killing, taking, or possession of each wildlife member constitutes a separate offense.

(6) District courts have jurisdiction concurrent with the superior courts of misdemeanors and gross misdemeanors committed in violation of this title or rules adopted pursuant to this title and may impose the punishment provided for these offenses. Superior courts have jurisdiction over felonies committed in violation of this title. [1988 c 265 § 3. Prior: 1987 c 506 § 69; 1987 c 380 § 19; 1987 c 372 § 2; 1982 c 31 § 1; 1981 c 310 § 6; 1980 c 78 § 92; 1955 c 36 § 77.16.240; prior: 1947 c 275 § 63; Rem. Supp. 1947 § 5992-72. Formerly RCW 77.16.240.]

Effective date—1988 c 265: See note following RCW 77.16.340.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.020 Revocation of hunting license for big game violation—Subsequent issuance—Appeal. In addition to other penalties provided by law, the director shall revoke the hunting license of a person who is convicted of a violation of RCW 77.16.020 involving big game or RCW 77.16.050. Forfeiture of bail twice during a five-year period for these violations constitutes the basis for a revocation under this section.

A hunting license shall not be issued to the person for two years from the revocation.

A person who has had a license revoked or has been denied issuance pursuant to this section or RCW 77.21.030, may appeal the decision as provided in chapter 34.05 RCW. [1987 c 506 § 70; 1980 c 78 § 124; 1975 1st ex.s. c 6 § 1. Formerly RCW 77.32.290.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.030 Revocation for shooting person or livestock—Subsequent issuance. The director shall revoke the hunting license of a person who shoots another person or domestic livestock while hunting. A hunting license shall not be issued to that person unless the director authorizes the issuance of a license, and damages caused by the wrongful shooting have been paid. [1987 c 506 § 71; 1980 c 78 § 123; 1955 c 36 § 77.32.280. Prior: 1949 c 44 § 1; Rem. Supp. 1949 § 5992-124a. Formerly RCW 77.32.280.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.040 Disposition of forfeited wildlife and articles. (1) Wildlife unlawfully taken or possessed remains the property of the state.

(2) The director may sell articles or devices seized and forfeited under this title by the court at public auction. The time, place, and manner of holding the sale shall be determined by the director. The director shall publish notice of the sale once a week for at least two consecutive weeks prior to the sale in at least one newspaper of general circulation in the county in which the sale is to be held. Proceeds from the sales shall be deposited in the state treasury to be credited to the state wildlife fund. [1989 c 314 § 5; 1987 c 506 § 72; 1980 c 78 § 25; 1955 c 36 § 77.12.110. Prior: 1947 c 275 § 21; Rem. Supp. 1947 § 5992-31. Formerly RCW 77.12.110.]

Finding—1989 c 314: See note following RCW 77.12.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.060 License forfeiture—Issuance prohibited.

(1) Upon conviction of a violation of this title or rules adopted pursuant to this title, the court may forfeit a license, in addition to other penalties provided by law. Upon subsequent conviction, the forfeiture of the license is mandatory. The director may prohibit issuance of a license to a person convicted two or more times or prescribe the conditions for subsequent issuance of a license.

(2) It shall be unlawful for a person to conduct an activity requiring a wildlife license, tag, or stamp for which they have had a license forfeiture or for which the director has prohibited the issuance of a license. [1989 c 314 § 6; 1987 c 506 § 73; 1980 c 78 § 122; 1955 c 36 § 77.32.260. Prior: 1947 c 275 § 115; Rem. Supp. 1947 § 5992-124. Formerly RCW 77.32.260.]

Finding—1989 c 314: See note following RCW 77.12.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.070 Illegal possession of wildlife—Reimbursement to state—Amounts—Bail.

(1) Whenever a person is convicted of illegal killing or possession of wildlife listed in this subsection, the convicting court shall order the person to reimburse the state in the following amounts for each animal killed or possessed:

- (a) Moose, antelope, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission \$2,000
- (b) Elk, deer, black bear, and cougar \$1,000
- (c) Mountain caribou and grizzly bear \$5,000

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, and the payment of a fine. No court may establish bail for illegal possession of wildlife listed in subsection (1) in an amount less than the bail established for hunting during the closed season plus the reimbursement value of wildlife set forth in subsection (1).

(3) If two or more persons are convicted of illegally possessing wildlife listed in this section, the reimbursement amount shall be imposed upon them jointly and separately.

(4) The reimbursement amount provided in this section shall be imposed in addition to and regardless of any penalty, including fines, or costs, that is provided for violating any provision of Title 77 RCW. The reimbursement required by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted reimbursement or any installment payment thereof may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence. [1989 c 11 § 28; 1987 c 506 § 74; 1986 c 318 § 1; 1984 c 258 § 336; 1983 1st ex.s. c 8 § 3.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1986 c 318: "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, 1986." [1986 c 318 § 2.]

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

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

Findings—1983 1st ex.s. c 8: "The legislature finds that wildlife is of great ecological, recreational, esthetic, and economic value to the people of the state of Washington. It further finds that the illegal taking and possession of certain valuable wildlife species is increasing at an alarming rate and that the state should be reimbursed for the loss of individual wildlife of these species in the amounts specified in section 3 of this act." [1983 1st ex.s. c 8 § 1.] "Section 3 of this act" consists of the enactment of RCW 77.21.070.

77.21.080 Wildlife conservation reward fund. The state wildlife conservation reward fund is established in the custody of the state treasurer. The director shall deposit in the fund all moneys designated to be placed in the fund by rule of the director. Moneys in the fund shall be spent to provide rewards to persons informing the department about violations of this title or rules adopted pursuant to this title. Disbursements from the fund shall be on the authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursement. [1989 c 11 § 29; 1987 c 506 § 75.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.21.090 Citations from wildlife violator compact party state—Failure to comply. (1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.17.010, the department shall suspend the violator's license privileges under this title until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the department. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of licensing privileges.

(2) Upon receipt of a report of a conviction from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.17.010, the department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of license privileges. [1993 c 82 § 5.]

Revoked licenses—Application—1993 c 82: See note following RCW 77.17.010.

Chapter 77.32 LICENSES

Sections

- 77.32.005 "Resident," "nonresident" defined.
- 77.32.007 "Special hunting season" defined.
- 77.32.010 Licenses or permits required—Exemption.
- 77.32.025 Establishment of times and places for family fishing with no license or catch record card—Authorized.
- 77.32.050 Licenses, permits, tags, stamps, and raffle tickets issued by authorized officials, others—Procedures—Rules.
- 77.32.060 Licenses, permits, tags, stamps, and raffle tickets—Amount of fees to be retained by license dealers.
- 77.32.070 Information required from license applicants—Reports on taking of wildlife.
- 77.32.090 Licenses, permits, tags, stamps, and raffle tickets—Rules for form, display, procedures.
- 77.32.092 Sport recreational license.
- 77.32.094 Validity of licenses issued by department of fisheries and department of wildlife.
- 77.32.101 Hunting and fishing licenses—Fees.
- 77.32.155 Hunter education training program—Certificate.
- 77.32.161 Temporary fishing license—Fees.
- 77.32.191 Trapper's license.
- 77.32.197 Trapper's license—Training program or examination requisite for issuance to initial licensee.
- 77.32.199 Revocation of trappers license for and removal of unauthorized traps.
- 77.32.211 Taxidermist, fur dealer, fishing guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits.
- 77.32.220 Reports required from persons with licenses or permits under RCW 77.32.211.
- 77.32.230 Free hunting and fishing licenses, criteria—Motor vehicle special parking permit may be used—Fishing license exemption for youths—Purchase of tags, permits, stamps, steelhead licenses, and raffle tickets required.
- 77.32.235 Group permits—Exemption from individual license and fee requirement—Conditions.
- 77.32.237 Disabled hunter's permits.
- 77.32.238 Disabled hunter's permits—Shooting from a motor vehicle—Assistance from nondisabled hunter.
- 77.32.240 Scientific permit—Procedures—Penalties—Fee.
- 77.32.250 Licenses nontransferable—Inspection procedures.
- 77.32.256 Duplicate licenses, rebates, permits, tags, and stamps—Fees.
- 77.32.320 Transport tags for game.
- 77.32.340 Transport tag fees.
- 77.32.350 Hound permit, upland game bird permit, western Washington pheasant, falconry license, and migratory waterfowl stamp—Fees, procedures.
- 77.32.352 January waterfowl hunting season—Hunting license exemption.
- 77.32.360 Steelhead catch record card—Rules.
- 77.32.3601 Return of steelhead fishing license—Credit issued—Expiration of section.
- 77.32.370 Special hunting season permits—Fee.
- 77.32.380 Conservation license—License required for persons parking on department lands or using game access facilities.
- 77.32.390 Valid big game permits.

77.32.005 "Resident," "nonresident" defined. For the purposes of this chapter:

A "resident" means a person who has maintained a permanent place of abode within this state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within this state, and who is not licensed to hunt or fish as a resident in another state.

A "nonresident" means a person who has not fulfilled the qualifications of a resident. [1989 c 305 § 17; 1980 c 78 § 102; 1961 c 94 § 1; 1957 c 176 § 14.]

Effective date—1989 c 305: See RCW 75.25.902.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.007 "Special hunting season" defined. For the purposes of this chapter "special hunting season" means a hunting season established by rule of the commission for the purpose of taking specified wildlife under a special hunting permit. [1984 c 240 § 8.]

77.32.010 Licenses or permits required—Exemption. (1) Except as otherwise provided in this chapter, a license issued by the director is required to:

(a) Hunt for wild animals or wild birds or fish for game fish;

(b) Practice taxidermy for profit;

(c) Deal in raw furs for profit;

(d) Act as a fishing guide;

(e) Operate a game farm;

(f) Purchase or sell anadromous game fish; or

(g) Use department-managed lands or facilities as provided by rules adopted pursuant to this title.

(2) A permit issued by the director is required to:

(a) Conduct, hold, or sponsor hunting or fishing contests or competitive field trials using live wildlife;

(b) Collect wild animals, wild birds, game fish, or protected wildlife for research or display; or

(c) Stock game fish.

(3) Aquaculture as defined in RCW 15.85.020 is exempt from the requirements of this section, except when being stocked in public waters under contract with the department. [1987 c 506 § 76; 1985 c 457 § 25; 1983 c 284 § 2; 1981 c 310 § 7; 1980 c 78 § 103; 1979 ex.s. c 3 § 1; 1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.025 Establishment of times and places for family fishing with no license or catch record card—Authorized. Notwithstanding RCW 77.32.010, the commission may adopt rules designating times and places for the purposes of family fishing days when licenses and catch record cards are not required to fish for game fish, including steelhead trout. [1996 c 20 § 2; 1987 c 506 § 103.]

Effective date—1996 c 20: See note following RCW 75.25.095.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.32.050 Licenses, permits, tags, stamps, and raffle tickets issued by authorized officials, others—Procedures—Rules. Licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The director may authorize department personnel, county auditors, or other reputable citizens to issue licenses, permits, tags, stamps, and raffle tickets, and collect the appropriate fees. The authorized persons shall pay on demand or before the tenth day of the following month the fees collected and shall make reports as required by the director. The director may adopt rules for issuing licenses, permits, tags, stamps, and raffle tickets, collecting and paying fees, and making reports. [1996 c 101 § 8; 1995 c 116 § 1; 1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

Findings—1996 c 101: See note following RCW 77.12.770.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.060 Licenses, permits, tags, stamps, and raffle tickets—Amount of fees to be retained by license dealers. The director may adopt rules establishing the amount a license dealer may charge and keep for each license, tag, permit, stamp, or raffle ticket issued. The director shall establish the amount to be retained by dealers to be at least fifty cents for each license issued, and twenty-five cents for each tag, permit, stamp, or raffle ticket, issued. The director shall report to the next regular session of the legislature explaining any increase in the amount retained by license dealers. Fees retained by dealers shall be uniform throughout the state. [1996 c 101 § 9; 1995 c 116 § 2; 1987 c 506 § 78; 1985 c 464 § 1; 1981 c 310 § 17; 1980 c 78 § 107; 1979 ex.s. c 3 § 3; 1970 ex.s. c 29 § 2; 1957 c 176 § 2; 1955 c 36 § 77.32.060. Prior: 1953 c 75 § 3; 1947 c 275 § 98; Rem. Supp. 1947 § 5992-107.]

Findings—1996 c 101: See note following RCW 77.12.770.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: "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 464 § 13.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective date—1970 ex.s. c 29: "The effective date of this 1970 amendatory act shall be January 1, 1971." [1970 ex.s. c 29 § 16.]

Effective date—1957 c 176: "Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 above shall become effective on January 1, 1958." [1957 c 176 § 15.]

77.32.070 Information required from license applicants—Reports on taking of wildlife. Applicants for a license, permit, tag, or stamp shall furnish the information required by the director. The director may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of wildlife. [1995 c 116 § 3; 1987 c 506 § 79; 1981 c 310 § 18; 1980 c 78 § 108; 1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.090 Licenses, permits, tags, stamps, and raffle tickets—Rules for form, display, procedures. The director may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW. [1996 c 101 § 10; 1995 c 116 § 4; 1987 c 506 § 80; 1981 c 310 § 19; 1980 c 78 § 109; 1955 c 36 § 77.32.090. Prior: 1947 c 275 § 101; Rem. Supp. 1947 § 5992-110.]

Findings—1996 c 101: See note following RCW 77.12.770.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.092 Sport recreational license. The legislature finds that it is in the best interest of recreational hunters and fishers in the state of Washington to be able to purchase all recreational hunting and fishing licenses as a single document. Under the combined department of fish and wildlife, there is the opportunity to establish uniform license requirements and procedures.

There is created a sport recreational license, to be administered by the department of fish and wildlife. The sport recreational license shall include the personal use food fish, game fish, hunting, hound, and eastern Washington upland bird licenses, for residents and nonresidents. The license shall also include three-day game fish and food fish licenses, for residents and nonresidents. The license shall include a warm water game fish surcharge, the funds from which shall be deposited in the warm water game fish account created under *section 18 of this act. [1994 c 255 § 1.]

***Reviser's note:** "Section 18 of this act" was vetoed by the governor.

Effective date—1994 c 255 §§ 1-13: "Sections 1 through 13 of this act shall take effect January 1, 1995." [1994 c 255 § 23.]

77.32.094 Validity of licenses issued by department of fisheries and department of wildlife. All licenses issued by the department of fisheries under Title 75 RCW or issued by the department of wildlife under Title 77 RCW shall be recognized as valid by the department of fish and wildlife until the stated expiration date. [1994 c 255 § 14.]

Effective date—1994 c 255 § 14: "Section 14 of this act shall take effect July 1, 1994." [1994 c 255 § 22.]

77.32.101 Hunting and fishing licenses—Fees. (1)

A combination hunting and fishing license allows a resident holder to hunt, and to fish for game fish throughout the state. The fee for this license is twenty-nine dollars.

(2) A hunting license allows the holder to hunt throughout the state. The fee for this license is fifteen dollars for residents and one hundred fifty dollars for nonresidents.

(3) A fishing license allows the holder to fish for game fish throughout the state. The fee for this license is seventeen dollars for residents fifteen years of age or older and under seventy years of age, three dollars for residents seventy years of age or older, twenty dollars for nonresidents under fifteen years of age, and forty-eight dollars for nonresidents fifteen years of age or older.

(4) A steelhead fishing license allows the holder of a combination hunting and fishing license or a fishing license issued under this section to fish for steelhead throughout the state. The fee for this license is eighteen dollars.

(5) A juvenile steelhead license allows residents under fifteen years of age and nonresidents under fifteen years of age who hold a fishing license to fish for steelhead throughout the state. The fee for this license is six dollars and entitles the holder to take up to five steelhead at which time another juvenile steelhead license may be purchased. Any person who purchases a juvenile steelhead license is prohibited from purchasing a steelhead license for the same calendar year. [1994 c 255 § 11; 1991 sp.s. c 7 § 1; 1985 c 464 § 2; 1981 c 310 § 20; 1980 c 78 § 110; 1975 1st ex.s. c 15 § 20.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Effective date—1991 sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 7 § 14.]

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: "Section 19 of this 1975 amendatory act shall be effective April 1, 1976. Sections 20 through 32 of this 1975 amendatory act shall be effective January 1, 1976." [1975 1st ex.s. c 15 § 34.]

77.32.155 Hunter education training program—Certificate. When purchasing a hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. Beginning January 1, 1995, all persons purchasing a hunting license for the first time, if born after January 1, 1972, shall present such certification.

The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations.

The director shall prescribe the type of instruction and the qualifications of the instructors.

Upon successful completion of the course, a trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section. [1993 c 85 § 1; 1987 c 506 § 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.161 Temporary fishing license—Fees. A nonresident or resident may obtain a temporary fishing license, which allows the holder to fish for game fish throughout the state for either three days or for one day. The fee for a three-day license is nine dollars for residents and seventeen dollars for nonresidents. The fee for a one-day license is three dollars for residents and seven dollars for nonresidents. The resident temporary fishing license is not valid for an eight consecutive day period beginning on the opening day of the lowland lake fishing season. [1994 c 255 § 10; 1991 sp.s. c 7 § 2; 1985 c 464 § 3; 1981 c 310 § 22; 1980 c 78 § 112; 1975 1st ex.s. c 15 § 27.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.191 Trapper's license. A state trapping license allows the holder to trap fur-bearing animals throughout the state; however, a trapper may not place traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner. A state trapping license is void on April 1st following the date of issuance. The fee for this license is thirty-six dollars for residents sixteen years of age or older, fifteen dollars for residents under sixteen years of age, and one hundred eighty dollars for nonresidents. [1991 sp.s. c 7 § 3; 1987 c 372 § 3; 1985 c 464 § 4; 1981 c 310 § 23. Prior: 1980 c 78 § 113; 1980 c 24 § 2; 1975 1st ex.s. c 15 § 28.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

Traps placed on private property: RCW 77.16.170, 77.21.010, 77.32.199.

77.32.197 Trapper's license—Training program or examination requisite for issuance to initial licensee. Persons purchasing a state trapping license for the first time shall present certification of completion of a course of instruction in safe, humane, and proper trapping techniques or pass an examination to establish that the applicant has the requisite knowledge.

The director shall establish a program for training persons in trapping techniques and responsibilities, including the use of trapping devices designed to painlessly capture or instantly kill. The director shall cooperate with national and state animal, humane, hunter education, and trapping organizations in the development of a curriculum. Upon successful completion of the course, trainees shall receive a trapper's training certificate signed by an authorized instructor. This certificate is evidence of compliance with this section. [1987 c 506 § 82; 1981 c 310 § 24; 1980 c 78 § 114; 1977 c 43 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.199 Revocation of trappers license for and removal of unauthorized traps. The commission may revoke the trapper's license of a person placing unauthorized traps on private property and may remove those traps. [1987 c 372 § 4.]

77.32.211 Taxidermist, fur dealer, fishing guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits. (1) A taxidermy license allows the holder to practice taxidermy for profit. The fee for this license is one hundred eighty dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for profit. The fee for this license is one hundred eighty dollars.

(3) A fishing guide license allows the holder to offer or perform the services of a professional guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars.

(7) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. [1991 sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.220 Reports required from persons with licenses or permits under RCW 77.32.211. Licensed taxidermists, fur dealers, anadromous game fish buyers, fishing guides, game farmers, and persons stocking game fish or conducting a hunting, fishing, or field trial contest shall make reports as required by rules of the director. [1987 c 506 § 84; 1983 c 284 § 4; 1981 c 310 § 26; 1980 c 78 § 116; 1955 c 36 § 77.32.220. Prior: 1947 c 275 § 111; Rem. Supp. 1947 § 5992-120.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.230 Free hunting and fishing licenses, criteria—Motor vehicle special parking permit may be used—Fishing license exemption for youths—Purchase of tags, permits, stamps, steelhead licenses, and raffle tickets required. (1) A person sixty-five years of age or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability and who is a resident may receive upon written application a hunting and fishing license free of charge.

(2) Residents who are honorably discharged veterans of the United States armed forces with a thirty percent or more service-connected disability may receive upon written application a hunting and fishing license free of charge.

(3) An honorably discharged veteran who is a resident and is confined to a wheelchair shall receive upon application a hunting license free of charge.

(4) A person who is blind, or a person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability from the department of social and health services, or a physically handicapped person confined to a wheelchair may receive upon written application a fishing license free of charge.

(5) A person who is blind or a physically handicapped person confined to a wheelchair who has been issued a card

for a permanent disability under RCW 46.16.381 may use that card in place of a fishing license.

(6) A fishing license is not required for residents under the age of fifteen.

(7) Tags, permits, stamps, and steelhead licenses required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall be purchased separately by persons receiving a free or reduced-fee license.

(8) Licenses issued at no charge under this section shall be issued from Olympia as provided by rule of the director, and are valid for five years. [1996 c 101 § 11; 1994 c 255 § 12; 1991 sp.s. c 7 § 5; 1988 c 176 § 914; 1987 c 506 § 85; 1985 c 464 § 6; 1985 c 182 § 2; 1983 c 280 § 1; 1981 c 310 § 27; 1980 c 78 § 117; 1973 1st ex.s. c 58 § 1; 1961 c 94 § 2; 1959 c 245 § 2; 1955 c 36 § 77.32.230. Prior: 1947 c 275 § 112; Rem. Supp. 1947 § 5992-121.]

Findings—1996 c 101: See note following RCW 77.12.770.

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Severability—1988 c 176: See RCW 71A.10.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.235 Group permits—Exemption from individual license and fee requirement—Conditions. Physically or mentally handicapped persons, hospital patients, and senior citizens may fish for game fish during open season without individual licenses or the payment of individual license fees if such fishing activity is occasional, is conducted in a group supervised by staff of a state-licensed or state-operated care facility, and the facility holds a group fishing permit issued by the director. The director shall issue such a permit upon application by care facility staff. [1990 c 35 § 4; 1984 c 33 § 1.]

Intent—1990 c 35: See note following RCW 75.25.200.

Food fish and shellfish: RCW 75.25.190.

77.32.237 Disabled hunter's permits. The commission shall attempt to enhance the hunting opportunities of persons of disability. The commission shall authorize the director to issue disabled hunter permits to persons of disability. The commission shall adopt rules governing the conduct of disabled hunters and their nondisabled companions. [1989 c 297 § 1.]

77.32.238 Disabled hunter's permits—Shooting from a motor vehicle—Assistance from nondisabled hunter. (1) A disabled hunter who possesses a disabled hunter permit and all appropriate hunting licenses may possess a loaded firearm or other legal hunting device in and may discharge a firearm or other legal hunting device from a nonmoving motor vehicle that has the engine turned off. Disabled hunters shall not be exempt from permit requirements for carrying concealed weapons, or from rules, laws, or ordinances concerning the discharge of these weapons.

No hunting shall be permitted from a motor vehicle that is parked on or beside the maintained portion of a public road.

(2) A person of disability holding a disabled hunter permit may be accompanied by one nondisabled licensed hunter who may assist the disabled hunter by killing game wounded by the disabled hunter, and by tagging and retrieving game killed by the disabled hunter. A nondisabled hunter shall not possess a loaded gun in, or shoot from, a motor vehicle. [1989 c 297 § 2.]

77.32.240 Scientific permit—Procedures—Penalties—Fee. A scientific permit allows the holder to collect for research or display wildlife or their nests and eggs as required in RCW 77.32.010 under conditions prescribed by the director. Before a permit is issued, the applicant shall demonstrate to the director their qualifications and establish the need for the permit. The director may require a bond of up to one thousand dollars to insure compliance with the permit. Permits are valid for the time specified, unless sooner revoked.

Holders of permits may exchange specimens with the approval of the director.

A permit holder who violates this section shall forfeit the permit and bond and shall not receive a similar permit for one year. The fee for a scientific permit is twelve dollars. [1991 sp.s. c 7 § 6; 1981 c 310 § 28; 1980 c 78 § 119; 1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.250 Licenses nontransferable—Inspection procedures. Licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall not be transferred and, unless otherwise provided in this chapter, are void on January 1st following the year for which the license, permit, tag, stamp, or raffle ticket was issued.

Upon request of a wildlife agent or ex officio wildlife agent, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, stamps, or raffle tickets for inspection and write their signatures for comparison and in addition display their wildlife. Failure to comply with the request is prima facie evidence that the person has no license or is not the person named. [1996 c 101 § 12; 1995 c 116 § 5; 1981 c 310 § 29; 1980 c 78 § 120; 1955 c 36 § 77.32.250. Prior: 1947 c 275 § 114; Rem. Supp. 1947 § 5992-123.]

Findings—1996 c 101: See note following RCW 77.12.770.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.256 Duplicate licenses, rebates, permits, tags, and stamps—Fees. The director shall by rule establish the conditions for issuance of duplicate licenses, rebates,

permits, tags, and stamps required by this chapter. The fee for a duplicate provided under this section is ten dollars for those licenses that are ten dollars and over, and for those licenses under ten dollars the duplicate fee is the value of the license. [1995 c 116 § 6; 1994 c 255 § 13; 1991 sp.s. c 7 § 7; 1987 c 506 § 86; 1985 c 464 § 7; 1981 c 310 § 30; 1980 c 78 § 121; 1975 1st ex.s. c 15 § 32.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.320 Transport tags for game. (1) In addition to a basic hunting license, a separate transport tag is required to hunt deer, elk, bear, cougar, sheep, mountain goat, moose, or wild turkey.

(2) A transport tag may only be obtained subsequent to the purchase of a valid hunting license and must have permanently affixed to it the hunting license number.

(3) Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director.

(4) Transport tags required by this section expire on March 31st following the date of issuance. [1990 c 84 § 4; 1987 c 506 § 87; 1981 c 310 § 8.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.340 Transport tag fees. Fees for transport tags shall be as follows:

(1) The fee for a resident deer tag is eighteen dollars. The fee for a nonresident deer tag is sixty dollars.

(2) The fee for a resident elk tag is twenty-four dollars. The fee for a nonresident elk tag is one hundred twenty dollars.

(3) The fee for a resident bear tag is eighteen dollars. The fee for a nonresident bear tag is one hundred eighty dollars.

(4) The fee for a resident cougar tag is twenty-four dollars. The fee for a nonresident cougar tag is three hundred sixty dollars.

(5) The fee for a mountain goat tag is sixty dollars for residents and one hundred eighty dollars for nonresidents. The fee shall be paid at the time of application. Applicants who are not selected for a mountain goat special season permit shall receive a refund of this fee, less five dollars.

(6) The fee for a sheep tag is ninety dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a sheep special season permit shall receive a refund of this fee, less five dollars.

(7) The fee for a moose tag is one hundred eighty dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a moose special season permit shall receive a refund of this fee, less five dollars.

(8) The fee for a wild turkey tag is eighteen dollars for residents and sixty dollars for nonresidents.

(9) The fee for a lynx tag is twenty-four dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a lynx special season permit shall receive a refund of this fee, less five dollars. [1991 sp.s. c 7 § 8; 1990 c 84 § 5; 1985 c 464 § 8; 1984 c 240 § 5; 1981 c 310 § 11.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.350 Hound permit, upland game bird permit, western Washington pheasant, falconry license, and migratory waterfowl stamp—Fees, procedures. In addition to a basic hunting license, a supplemental license, permit, or stamp is required to hunt for quail, partridge, pheasant, or migratory waterfowl, to hunt with a raptor, or to hunt wild animals with a dog.

(1) A hound permit is required to hunt wild animals, except rabbits and hares, with a dog. The fee for this permit is twelve dollars.

(2) An eastern Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in eastern Washington. The fee for this permit is ten dollars.

(3) A western Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in western Washington. The fee for this permit is thirty-five dollars. Western Washington upland game bird permits must contain numbered spaces for recording the location and date of harvest of each western Washington pheasant. It is unlawful to harvest a western Washington pheasant without immediately recording this information on the permit.

(4) Effective January 1, 1993, the permit shall be available as a season option, a juvenile full season option, or a two-day option. The fee for this permit is:

(a) For the full season option, thirty-five dollars;

(b) For the juvenile full season or the two-day option, twenty dollars.

For the purposes of this subsection a juvenile is defined as a person under fifteen years of age upon the opening date of the western Washington pheasant season.

(5) Western Washington upland game permits are valid for the following number of pheasants and harvesting pheasants in excess of these numbers requires another permit:

(a) A full season permit is valid for no more than ten pheasants;

(b) A juvenile full season permit is valid for no more than six pheasants;

(c) A two-day permit is valid for no more than four pheasants.

(6) A falconry license is required to possess or hunt with a raptor, including seasons established exclusively for

hunting in that manner. The fee for this license is thirty-six dollars.

(7) A migratory waterfowl stamp affixed to a basic hunting license is required for all persons sixteen years of age or older to hunt migratory waterfowl. The fee for the stamp is six dollars.

(8) The migratory waterfowl stamp shall be validated by the signature of the licensee written across the face of the stamp.

(9) The migratory waterfowl stamps required by this section expire on March 31st following the date of issuance. [1992 c 41 § 1; 1991 sp.s. c 7 § 9; 1990 c 84 § 6; 1989 c 365 § 1; 1987 c 506 § 105. Prior: 1985 c 464 § 9; 1985 c 243 § 1; 1984 c 240 § 6; 1981 c 310 § 12.]

Effective date—1992 c 41: "This act shall take effect January 1, 1993. The director of wildlife may take steps necessary to ensure that this act is implemented on its effective date." [1992 c 41 § 2.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.352 January waterfowl hunting season—Hunting license exemption. Hunters who have a valid hunting license, and a valid migratory waterfowl stamp that may be used after December 31 of the year of issuance, are not required to purchase a new hunting license in order to use the migratory waterfowl stamp during the period in which a waterfowl hunting season exists in the month of January in the year following the issuance of the migratory waterfowl stamp and hunting license. [1995 c 59 § 1.]

77.32.360 Steelhead catch record card—Rules. (1) Each person who returns a steelhead catch record card to an authorized license dealer within thirty days following the period for which it was issued shall be given a credit equal to five dollars towards that day's purchase of any license, permit, transport tag, or stamp required by this chapter. This subsection does not apply to annual steelhead catch record cards for persons under the age of fifteen.

(2) Each person who returns a steelhead catch record card to the department within thirty days following the period for which it was issued shall be issued a nontransferable credit equal to five dollars towards the purchase of the next year's steelhead fishing license. Lost, stolen, or destroyed credits will not be replaced. This subsection does not apply to annual steelhead catch record cards for persons under the age of fifteen.

(3) Catch record cards necessary for proper management of the state's game fish resources shall be administered under rules adopted by the director and issued at no charge. [1996 c 234 § 1; 1995 c 116 § 7; 1991 sp.s. c 7 § 10; 1990 c 84 § 7; 1987 c 506 § 88; 1985 c 464 § 10; 1981 c 310 § 13.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.3601 Return of steelhead fishing license—Credit issued—Expiration of section. (1) Each person who returns a 1995 steelhead fishing license to the department shall be issued a nontransferable credit equal to six dollars towards a 1997 steelhead fishing license. A person who purchased a 1995 steelhead fishing license but is no longer in possession of the license may apply to the department for a six-dollar credit by completing a written affidavit provided by the department.

(2) Each person who returns a 1995 juvenile steelhead fishing license to the department shall be issued a nontransferable credit equal to two dollars towards the appropriate 1997 steelhead fishing license. A person who purchased a 1995 juvenile steelhead fishing license but is no longer in possession of the license may apply to the department for a two-dollar credit by completing a written affidavit provided by the department.

(3) A person who purchased a 1995 steelhead fishing license or a 1995 juvenile steelhead fishing license is eligible for no more than one credit issued under this section.

(4) This section expires December 31, 1997. [1996 c 234 § 2.]

77.32.370 Special hunting season permits—Fee. (1) A special hunting season permit is required to hunt in each special season established under chapter 77.12 RCW.

(2) Persons may apply for special hunting season permits as provided by rule of the director.

(3) The application fee to participate in a special hunting season is three dollars. [1991 sp.s. c 7 § 11; 1987 c 506 § 89; 1984 c 240 § 7; 1981 c 310 § 14.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.380 Conservation license—License required for persons parking on department lands or using game access facilities. Persons sixteen years of age or older who use clearly identified department lands and access facilities are required to possess a conservation license or a hunting, fishing, trapping, or free license on their person while using the facilities. The fee for this license is ten dollars annually.

The spouse, all children under eighteen years of age, and guests under eighteen years of age of the holder of a valid conservation license may use department lands and access facilities when accompanied by the license holder.

Youth groups may use department lands and game access facilities without possessing a conservation license when accompanied by a license holder.

The conservation license is nontransferable and must be validated by the signature of the holder. Upon request of a wildlife agent or ex officio wildlife agent a person using clearly identified department lands shall exhibit the required license. [1993 sp.s. c 2 § 77; 1991 sp.s. c 7 § 12; 1988 c 36 § 52; 1987 c 506 § 90; 1985 c 464 § 11; 1981 c 310 § 15.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.390 Valid big game permits. Hunters who have valid big game permits that may be used after December 31 of the year of issuance, are not required to purchase a new hunting license in order to use the big game permit during the period covered by the permit in the year following issuance of the big game permit. [1989 c 153 § 1.]

Chapter 77.36

WILDLIFE DAMAGE

Sections

77.36.005	Findings.
77.36.010	Definitions.
77.36.020	Game damage control—Special hunt.
77.36.030	Trapping or killing wildlife causing damage—Emergency situations.
77.36.040	Payment of claims for damages—Procedure—Limitations.
77.36.050	Claimant refusal—Excessive claims.
77.36.060	Claim refused—Posted property.
77.36.070	Limit on total claims from wildlife fund per fiscal year.
77.36.080	Limit on total claims from general fund per fiscal year—Emergency exceptions.
77.36.900	Application—1996 c 54.
77.36.901	Effective date—1996 c 54.

77.36.005 Findings. The legislature finds that:

(1) As the number of people in the state grows and wildlife habitat is altered, people will encounter wildlife more frequently. As a result, conflicts between humans and wildlife will also increase. Wildlife is a public resource of significant value to the people of the state and the responsibility to minimize and resolve these conflicts is shared by all citizens of the state.

(2) In particular, the state recognizes the importance of commercial agricultural and horticultural crop production and the value of healthy deer and elk populations, which can damage such crops. The legislature further finds that damage prevention is key to maintaining healthy deer and elk populations, wildlife-related recreational opportunities, and commercially productive agricultural and horticultural crops, and that the state, participants in wildlife recreation, and private landowners and tenants share the responsibility for damage prevention. Toward this end, the legislature encourages landowners and tenants to contribute through their land management practices to healthy wildlife populations and to provide access for related recreation. It is in the best interests of the state for the department of fish and wildlife to respond quickly to wildlife damage complaints and to work with these landowners and tenants to minimize and/or prevent damages and conflicts while maintaining deer and elk populations for enjoyment by all citizens of the state.

(3) A timely and simplified process for resolving claims for damages caused by deer and elk for commercial agricultural or horticultural products is beneficial to the claimant and the state. [1996 c 54 § 1.]

77.36.010 Definitions. Unless otherwise specified, the following definitions apply throughout this chapter:

(1) "Crop" means a commercially raised horticultural and/or agricultural product and includes growing or harvested product but does not include livestock. For the purposes of this chapter all parts of horticultural trees shall be considered a crop and shall be eligible for claims.

(2) "Emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, or fowl.

(3) "Immediate family member" means spouse, brother, sister, grandparent, parent, child, or grandchild. [1996 c 54 § 2.]

77.36.020 Game damage control—Special hunt.

The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, and to kill the animals when no other practical means of damage control is feasible.

If the department receives recurring complaints regarding property being damaged as described in this section or RCW 77.36.030 from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall consider conducting a special hunt or special hunts to reduce the potential for such damage. [1996 c 54 § 3.]

77.36.030 Trapping or killing wildlife causing damage—Emergency situations. (1) Subject to the following limitations and conditions, the owner, the owner's immediate family member, the owner's documented employee, or a tenant of real property may trap or kill on that property, without the licenses required under RCW 77.32.010 or authorization from the director under RCW 77.12.240, wild animals or wild birds that are damaging crops, domestic animals, or fowl:

(a) Threatened or endangered species shall not be hunted, trapped, or killed;

(b) Except in an emergency situation, deer, elk, and protected wildlife shall not be killed without a permit issued and conditioned by the director or the director's designee. In an emergency, the department may give verbal permission followed by written permission to trap or kill any deer, elk, or protected wildlife that is damaging crops, domestic animals, or fowl; and

(c) On privately owned cattle ranching lands, the land owner or lessee may declare an emergency only when the department has not responded within forty-eight hours after having been contacted by the land owner or lessee regarding damage caused by wild animals or wild birds. In such an emergency, the owner or lessee may trap or kill any deer, elk, or other protected wildlife that is causing the damage but deer and elk may only be killed if such lands were open to public hunting during the previous hunting season, or the closure to public hunting was coordinated with the department to protect property and livestock.

(2) Except for coyotes and Columbian ground squirrels, wildlife trapped or killed under this section remain the

property of the state, and the person trapping or killing the wildlife shall notify the department immediately. The department shall dispose of wildlife so taken within three days of receiving such a notification and in a manner determined by the director to be in the best interest of the state. [1996 c 54 § 4.]

77.36.040 Payment of claims for damages—

Procedure—Limitations. (1) Pursuant to this section, the director or the director's designee may distribute money appropriated to pay claims for damages to crops caused by wild deer or elk in an amount of up to ten thousand dollars per claim. Damages payable under this section are limited to the value of such commercially raised horticultural or agricultural crops, whether growing or harvested, and shall be paid only to the owner of the crop at the time of damage, without assignment. Damages shall not include damage to other real or personal property including other vegetation or animals, damages caused by animals other than wild deer or elk, lost profits, consequential damages, or any other damages whatsoever. These damages shall comprise the exclusive remedy for claims against the state for damages caused by wildlife.

(2) The director may adopt rules for the form of affidavits or proof to be provided in claims under this section. The director may adopt rules to specify the time and method of assessing damage. The burden of proving damages shall be on the claimant. Payment of claims shall remain subject to the other conditions and limits of this chapter.

(3) If funds are limited, payments of claims shall be prioritized in the order that the claims are received. No claim may be processed if:

(a) The claimant did not notify the department within ten days of discovery of the damage. If the claimant intends to take steps that prevent determination of damages, such as harvest of damaged crops, then the claimant shall notify the department as soon as reasonably possible after discovery so that the department has an opportunity to document the damage and take steps to prevent additional damage; or

(b) The claimant did not present a complete, written claim within sixty days after the damage, or the last day of damaging if the damage was of a continuing nature.

(4) The director or the director's designee may examine and assess the damage upon notice. The department and claimant may agree to an assessment of damages by a neutral person or persons knowledgeable in horticultural or agricultural practices. The department and claimant shall share equally in the costs of such third party examination and assessment of damage.

(5) There shall be no payment for damages if:

(a) The crops are on lands leased from any public agency;

(b) The landowner or claimant failed to use or maintain applicable damage prevention materials or methods furnished by the department, or failed to comply with a wildlife damage prevention agreement under RCW 77.12.260;

(c) The director has expended all funds appropriated for payment of such claims for the current fiscal year; or

(d) The damages are covered by insurance. The claimant shall notify the department at the time of claim of

insurance coverage in the manner required by the director. Insurance coverage shall cover all damages prior to any payment under this chapter.

(6) When there is a determination of claim by the director or the director's designee pursuant to this section, the claimant has sixty days to accept the claim or it is deemed rejected. [1996 c 54 § 5.]

77.36.050 Claimant refusal—Excessive claims. If the claimant does not accept the director's decision under RCW 77.36.040, or if the claim exceeds ten thousand dollars, then the claim may be filed with the office of risk management under RCW 4.92.040(5). The office of risk management shall recommend to the legislature whether the claim should be paid. If the legislature approves the claim, the director shall pay it from moneys appropriated for that purpose. No funds shall be expended for damages under this chapter except as appropriated by the legislature. [1996 c 54 § 6.]

77.36.060 Claim refused—Posted property. The director may refuse to consider and pay claims of persons who have posted the property against hunting or who have not allowed public hunting during the season prior to the occurrence of the damages. [1996 c 54 § 7.]

77.36.070 Limit on total claims from wildlife fund per fiscal year. The department may pay no more than one hundred twenty thousand dollars per fiscal year from the wildlife fund for claims under RCW 77.36.040 and for assessment costs and compromise of claims. Such money shall be used to pay animal damage claims only if the claim meets the conditions of RCW 77.36.040 and the damage occurred in a place where the opportunity to hunt was not restricted or prohibited by a county, municipality, or other public entity during the season prior to the occurrence of the damage. [1996 c 54 § 8.]

77.36.080 Limit on total claims from general fund per fiscal year—Emergency exceptions. (1) The department may pay no more than thirty thousand dollars per fiscal year from the general fund for claims under RCW 77.36.040 and for assessment costs and compromise of claims unless the legislature declares an emergency. Such money shall be used to pay animal damage claims only if the claim meets the conditions of RCW 77.36.040 and the damage occurred in a place where the opportunity to hunt was restricted or prohibited by a county, municipality, or other public entity during the season prior to the occurrence of the damage.

(2) The legislature may declare an emergency, defined for the purposes of this section as any happening arising from weather, other natural conditions, or fire that causes unusually great damage to commercially raised agricultural or horticultural crops by deer or elk. In an emergency, the department may pay as much as may be subsequently appropriated, in addition to the funds authorized under subsection (1) of this section, for claims under RCW 77.36.040 and for assessment and compromise of claims. Such money shall be used to pay animal damage claims only if the claim meets the conditions of RCW 77.36.040 and the

department has expended all funds authorized under RCW 77.36.070 or subsection (1) of this section. [1996 c 54 § 9.]

77.36.900 Application—1996 c 54. Chapter 54, Laws of 1996 applies prospectively only and not retroactively. It applies only to claims that arise on or after July 1, 1996. [1996 c 54 § 10.]

77.36.901 Effective date—1996 c 54. Sections 1 through 12 of this act shall take effect July 1, 1996. [1996 c 54 § 13.]

Chapter 77.44

WARM WATER GAME FISH ENHANCEMENT PROGRAM

Sections

77.44.010	Warm water game fish enhancement program—Created.
77.44.020	Species included in term "warm water game fish."
77.44.030	Surcharge.
77.44.040	Program goals.
77.44.050	Warm water game fish account—Created—Use of moneys.

77.44.010 Warm water game fish enhancement program—Created. A warm water game fish enhancement program is created in the department to be funded from the sale of a warm water game fish surcharge. The enhancement program shall be designed to increase the opportunities to fish for and catch warm water game fish including: Largemouth black bass, smallmouth black bass, channel catfish, black crappie, white crappie, walleye, and tiger musky. The program shall be designed to use a practical applied approach to increasing warm water fishing. The department shall use the funds available efficiently to assure the greatest increase in the fishing for warm water fish at the lowest cost. This approach shall involve the minimization of overhead and administrative costs and the maximization of productive in-the-field activities. [1996 c 222 § 1.]

Effective dates—1996 c 222: "(1) Sections 1, 2, and 4 through 6 of this act shall take effect July 1, 1996.

(2) Section 3 of this act shall take effect January 1, 1997." [1996 c 222 § 8.]

77.44.020 Species included in term "warm water game fish." Unless the context clearly requires otherwise, as used in this chapter, "warm water game fish" includes the following species: Bass, channel catfish, walleye, crappie, and other species as defined by the department. [1996 c 222 § 2.]

Effective dates—1996 c 222: See note following RCW 77.44.010.

77.44.030 Surcharge. (Effective January 1, 1997.)

(1) A warm water game fish surcharge allows a person to fish throughout the state for warm water game fish.

(2) The annual fee for a game fish surcharge is five dollars and the surcharge is required in addition to an annual game fishing license, except for those persons under fifteen years of age for which there is no charge. Holders of three-day resident fishing licenses, three-day nonresident fishing licenses, and nonresident annual fishing licenses shall pay a five-dollar surcharge to fish for warm water fish.

(3) The department shall use the most cost-effective format in designing and administering the warm water game fish surcharge.

(4) A warm water game fish surcharge shall only be required to fish for: Largemouth bass, smallmouth bass, walleye, black crappie, white crappie, channel catfish, and tiger musky. [1996 c 222 § 3.]

Effective dates—1996 c 222: See note following RCW 77.44.010.

77.44.040 Program goals. The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work with the department of natural resources to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall

work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

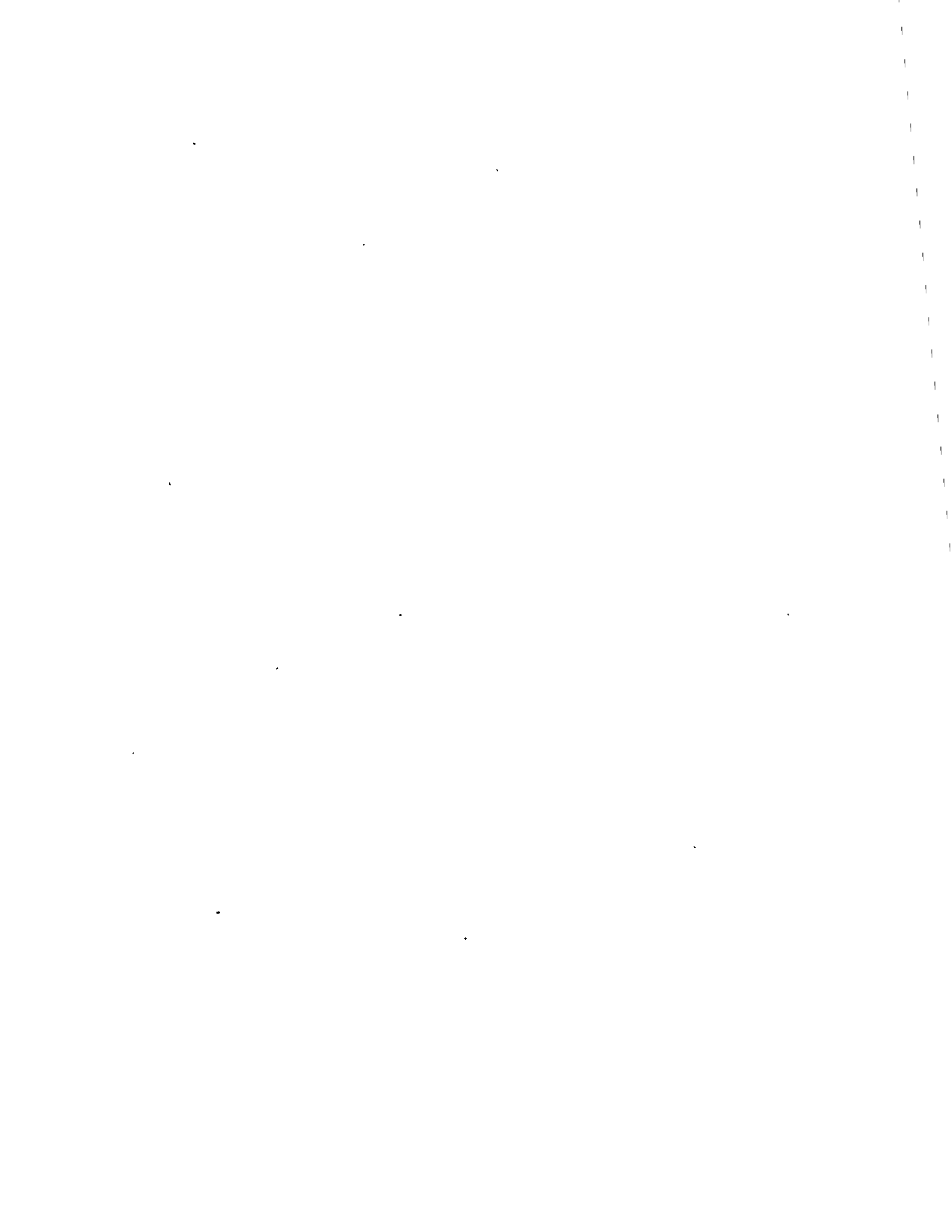
The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program. [1996 c 222 § 4.]

Effective dates—1996 c 222: See note following RCW 77.44.010.

77.44.050 Warm water game fish account—Created—Use of moneys. The warm water game fish account is hereby created in the state wildlife fund. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the warm water game fish enhancement program, including the development of warm water pond and lake habitat, culture of warm water game fish, improvement of warm water fish habitat, management of warm water fish populations, and other practical activities that will improve the fishing for warm water fish. Funds from the warm water game fish surcharge shall not serve as replacement funding for department-operated warm water fish projects existing on December 31, 1994. Funds from the warm water game fish account shall not be used for the operation or construction of the warm water fish culture project at Ringold unless specifically authorized by legislation.

Funds from the sale of the warm water game fish surcharges shall be deposited in the warm water game fish account. [1996 c 222 § 5.]

Effective dates—1996 c 222: See note following RCW 77.44.010.



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.
 - 78.56** Metals mining and milling operations.
- 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 community, trade, and economic development: Chapter 43.330 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.*

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.
- 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 incorporations 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 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.]

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 department of natural resources.

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 department of natural resources. 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 department of natural resources. [1988 c 127 § 31; 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.
- 78.08.070 Cut, excavation, tunnel or test hole in lieu of discovery shaft.
- 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 or affidavit of fees paid.
- 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 or her 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 or paying any fee or fees in lieu of assessment work 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. [1995 c 114 § 1; 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 or affidavit of fees paid. 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 or her knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate either an affidavit or oath of labor performed on such claim, or affidavit or oath of fee or fees paid to the federal government in lieu of the annual labor requirement. Such affidavit shall state the exact

amount of fee or fees paid, or the 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. When both fee and labor requirements have been waived by the federal government, such affidavit will contain a statement to that effect and the state shall not require labor to be performed. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area. [1995 c 114 § 2; 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

- 78.22.010 Extinguishment of unused mineral rights authorized.
 78.22.020 "Mineral interest" defined.
 78.22.030 Acts constituting use of mineral interest.
 78.22.040 Statement of claim—Contents—Fees—Filing.

(1996 Ed.)

- 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

Sections

ARTICLE I DEFINITION OF TERMS

78.40.010 Definitions.

ARTICLE II INSPECTION DEPARTMENT

78.40.060 Coal mining code—Inspection department.

ARTICLE V VENTILATION

78.40.160 Minimum quantity of air required.
78.40.163 Separate air currents for each division.
78.40.166 Ventilation to be sufficient for safety and health.

- 78.40.169 Measurement of air.
- 78.40.172 Measurement of air—Time for taking.
- 78.40.175 Measurement of air—Record.
- 78.40.178 Fire bosses in gaseous mines.
- 78.40.181 Fire boss to report on safety of mine.
- 78.40.184 Fan operation at nongaseous mines.
- 78.40.187 Continuous operation of fans at gaseous mines.
- 78.40.190 Ventilating pressure to be registered—Types and location of fans.
- 78.40.193 Furnace, unlawful ventilation.
- 78.40.196 Air bridges, undercasts, overcasts—Construction.
- 78.40.199 Ventilating doors to close automatically.
- 78.40.202 Doors to be hung in pairs—Extra door.
- 78.40.205 Self-acting doors or attendant.
- 78.40.208 Stoppings between airways—Construction.
- 78.40.211 Stoppings between airways—Airtight stoppings.
- 78.40.214 Wood stoppings to get air to working places.
- 78.40.217 Outlets, number required—Exceptions.
- 78.40.220 Distances allowed from outlets or passages for removal of coal.
- 78.40.223 Crosscuts—Requirements.
- 78.40.226 Conducting air to crosscuts.
- 78.40.229 Danger signs.

ARTICLE VI MAPS AND PLANS

- 78.40.235 Survey and map of mine.
- 78.40.238 Maps to show surface objects.
- 78.40.241 Maps to show underground conditions.
- 78.40.244 Separate map for each seam.
- 78.40.247 Separate surface maps.
- 78.40.250 Maps, where filed.
- 78.40.253 Annual extension of survey—Maps to be changed.
- 78.40.256 Final survey and map.
- 78.40.259 Failure to furnish maps—Penalty.
- 78.40.262 Resurveys and maps—Expense.

ARTICLE VII HOISTS AND HOISTING

- 78.40.270 Signaling apparatus required.
- 78.40.273 Hoisting apparatus—Requirements.
- 78.40.276 Strength and inspection of safety devices.
- 78.40.279 Testing safety catches.
- 78.40.281 Allowable proximity of structures to ventilating fan or main airway.
- 78.40.284 Men and materials not to be hoisted together.
- 78.40.287 Human capacity of cages—Attendant.
- 78.40.290 Restrictions on hoisting speed.
- 78.40.293 Hoistmen—Qualifications.
- 78.40.296 Riding loaded cars—Traveling ways for men.

ARTICLE VIII DUTIES OF OPERATORS

- 78.40.300 Liability of foremen as agents of operators.
- 78.40.303 Report of deaths and injuries.
- 78.40.306 Matters to be reported to inspector.
- 78.40.309 Superintendent acting as foreman.
- 78.40.312 Mine foreman to have certificate—Temporary mine foreman.
- 78.40.315 Assistant mine foreman, fire boss, to have certificate—Temporary employment.
- 78.40.318 Foreman in charge underground—Exception.
- 78.40.321 Notice of change of name of mine.
- 78.40.324 Penalty for operating without a foreman.
- 78.40.327 Boiler inspections—Report—Penalty.
- 78.40.330 Safety devices on boilers.
- 78.40.333 Permit to temporarily locate boiler nearer shaft.
- 78.40.336 Testing safety devices.
- 78.40.339 Washhouse for employees.
- 78.40.342 Fire protection—Automatic sprinklers.
- 78.40.345 Timber for props.
- 78.40.348 Notice of lease or sale of a mine.
- 78.40.351 Accidents—Inquests—Investigations—Costs.
- 78.40.354 Certain steampipes to be insulated.
- 78.40.357 Internal combustion engines prohibited—Penalty.

- 78.40.360 Precautions against explosions of dust.
- 78.40.363 Stables in mines—Storage of hay or straw—Lining of pump rooms.
- 78.40.366 Weight before screening when ton rate employment.
- 78.40.369 Escape shafts, equipment—Signboards.
- 78.40.372 Width of barrier pillars—Penalty.
- 78.40.375 Operator's reports, annual and monthly—Contents—Penalty.
- 78.40.378 Shelter holes on haulage roads.
- 78.40.381 Safeguarding personnel from machinery, stairs, etc.

ARTICLE IX DUTIES OF OFFICIALS

- 78.40.390 Superintendent to see laws are observed.
- 78.40.393 Superintendent, duties as to other officials.
- 78.40.396 Superintendent or assistant to visit working places.
- 78.40.399 Operator's duties—Posting rules and notices.
- 78.40.402 Foreman—Duties as to interior of mines.
- 78.40.405 Foreman—Duties as to workers in mines.
- 78.40.408 Foreman—Records.
- 78.40.411 Foreman—Duty to drill men on means of escape.
- 78.40.414 Foreman—Duties as to ventilation.
- 78.40.417 Foreman—Weekly examination of mine.
- 78.40.420 Foreman—Precautions against gas and water.
- 78.40.423 Foreman—Duty to check fire bosses.
- 78.40.426 Foreman—Duty to visit working places.
- 78.40.429 Foreman—Duties in case of accidents.
- 78.40.432 Fire boss—Duties in general.
- 78.40.435 Fire boss—Danger signs.
- 78.40.438 Fire boss—Record of inspections—Procedure upon report of gas.
- 78.40.441 Shot firers—Reports.
- 78.40.444 Shot firing—Restrictions on.

ARTICLE X MINE RESCUE EQUIPMENT

- 78.40.450 Rescue apparatus and supplies—Reports on.
- 78.40.453 Stretchers required—Use.
- 78.40.456 Woolen blankets required.
- 78.40.459 Medical supplies required.
- 78.40.462 First aid kits—Penalties.

ARTICLE XI POWDER AND EXPLOSIVES

- 78.40.470 Explosives, how and where to be kept.
- 78.40.473 Use of lamps and lighted pipes near explosives—Opening receptacles.
- 78.40.476 High explosives.
- 78.40.479 Firing dependent shots—Permit.
- 78.40.482 Black powder, how handled.
- 78.40.485 Needles and tamping bars—Depth of holes—Unconfined shots—Penalty.
- 78.40.488 Storage of explosives—Issuance to workers—Penalty.

ARTICLE XII SAFETY LAMPS

- 78.40.500 Safety lamps—Type—Examination.
- 78.40.503 Safety lamps—Open lights prohibited, when.
- 78.40.506 Safety lamps—Tampering with lamps or using other lighting devices—Penalty.
- 78.40.509 Safety lamps—Penalty.
- 78.40.512 Safety lamps—Appeal—Number of lamps.

ARTICLE XIII SHAFT SINKING

- 78.40.515 Shaft driving to be open to inspection.
- 78.40.518 Precautions against falling material.
- 78.40.521 Hoisting methods.
- 78.40.524 Shaft platforms.
- 78.40.527 Shaft levels to be made safe.
- 78.40.530 Precaution when gas in shaft—Blasting in shaft sinking.
- 78.40.533 Ventilating shafts while being sunk.
- 78.40.536 Restrictions on riding buckets.

ARTICLE XIV
RULES FOR THE INSTALLATION
OF ELECTRICITY

- 78.40.540 Compliance with rules—Definitions.
- 78.40.543 Grounding.
- 78.40.546 Voltage underground—Installations—Danger signs.
- 78.40.549 Switchboards.
- 78.40.552 Gloves and mats for repairmen.
- 78.40.555 Meddling with electrical system—Penalty.
- 78.40.558 Defects to be reported.
- 78.40.561 Underground installations—Authorized personnel only—Fire protection.
- 78.40.564 Insulation.
- 78.40.567 Switches, fuses and circuit breakers—Operation and capacity.
- 78.40.570 Motors.
- 78.40.573 Electric locomotives.
- 78.40.576 Incandescent lamps.
- 78.40.579 Shot firing by electricity.
- 78.40.581 Electric signalings.

ARTICLE XV
HOURS OF LABOR

- 78.40.585 Eight hour day—Penalty for violation by employer.
- 78.40.588 Eight hour day—Penalty for violation by employee.
- 78.40.591 Eight hour day—Exceptions to eight hour day.
- 78.40.594 Eight hour day—Enforcement.

ARTICLE XVI
GENERAL RULES

- 78.40.600 Oil and grease in mines—Use, storage.
- 78.40.603 Explosive oil in mines, when—Storage of motor oil.
- 78.40.606 Employment of persons under eighteen, when—Penalty.
- 78.40.609 Passing danger signals prohibited.
- 78.40.612 Miners to check in and out.
- 78.40.615 Entry by unauthorized personnel.
- 78.40.618 Intoxicants prohibited—Penalty.
- 78.40.621 Mining pillars alone prohibited.
- 78.40.624 Workman to examine working place.
- 78.40.627 Posting and advising new men of rules.
- 78.40.630 Duty to inform foreman of dangers.
- 78.40.633 Foot travel on slopes, roads, prohibited.
- 78.40.636 Riding cages and cars in shafts and slopes prohibited.
- 78.40.639 Riding full cars prohibited—Exception.
- 78.40.642 Destroying signs, etc.—Prosecution.
- 78.40.645 Tampering with equipment prohibited.
- 78.40.648 Quantity of explosives allowed in mine.
- 78.40.651 Limitations on storage and handling of explosives.
- 78.40.654 Crowding on and off cars prohibited—Penalty.
- 78.40.657 Prerequisite to entrusting lamps to workers.
- 78.40.660 Unauthorized possession of keys to safety lamps—Prosecution.
- 78.40.663 Brushing or blowing gas prohibited.
- 78.40.666 Action when gas ignited by blast—Leaving gas blowers burning prohibited—Prosecution.
- 78.40.669 Warning by shot firer.
- 78.40.672 Warning when driving crosscuts.
- 78.40.675 Precautions in handling explosives.
- 78.40.678 Types of tamping bars for blasting enumerated.
- 78.40.681 Blasting holes.
- 78.40.684 Incombustible tamping material in gaseous or dusty mines—Penalty.
- 78.40.687 Abandoned shafts to be fenced or filled.
- 78.40.690 Entering abandoned portions prohibited—Prosecution.
- 78.40.693 Interference with airway or roads prohibited.
- 78.40.696 Signal code to be posted.
- 78.40.699 Smokers' articles prohibited.
- 78.40.702 Prompt treatment of injured.
- 78.40.705 Contravening rules—Penalty.
- 78.40.708 Dead line set in shafts or slopes—Penalty.
- 78.40.711 Copies of laws and rules for employees.
- 78.40.714 Meddling with identifying checks—Penalty.
- 78.40.717 Prosecutions by state mine inspector.
- 78.40.720 Cleared space around air shafts, escapement ways.

- 78.40.723 Scales—Record of weights—Weighers and check weighers, oaths, duties—Violation, penalty.
- 78.40.726 Returning to missed shots.
- 78.40.729 Bribery to procure employment prohibited—Penalty.
- 78.40.732 Miner to examine safety of working place—Safety rules.
- 78.40.735 Duties of driver.
- 78.40.738 Duties of a trip rider.
- 78.40.741 Duties of hoisting engineers.
- 78.40.744 Duties of motorman and locomotive engineer.
- 78.40.747 Duties of firemen.
- 78.40.750 Duties of fan operator.
- 78.40.753 Duties of hooker-on.
- 78.40.756 Duties of cager.
- 78.40.759 Duties of topmen—Enforcement of nonconflicting rules and regulations.

ARTICLE XVII
OFFENSES AND PENALTIES

- 78.40.765 Interference with appliances or employees—Penalty—General penalty.

ARTICLE XVIII
CONSTRUCTION

- 78.40.770 General repealer.
- 78.40.771 Severability—1917 c 36.
- 78.40.772 Effective date for certain compliance.
- 78.40.773 What constitutes a coal mine—Inspection.

ARTICLE XIX
SAFETY COMMITTEE

- 78.40.780 Safety committee—Members, officers, records, duties—Appeals to inspector.
- 78.40.783 Subsafety committee—Members, qualifications, duties.
- 78.40.786 Outside committee—Members, duties.
- 78.40.789 Safety bulletin boards.
- 78.40.791 Rule for loaders in certain mines—Signs.
- 78.40.794 Workman to report violations of safety rules.
- 78.40.797 First aid—Education, treatment, records.

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 workers 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. [1989 c 12 § 20; 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 department of natural resources. 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 department of natural resources shall be the property of the state and be kept as a permanent record in the department's files, and shall be held as confidential information unless released by written permission of the owner or operator. [1988 c 127 § 32; 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.]

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 workers, 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 or she 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. [1989 c 12 § 21; 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 tipple building and trestle thereto, unless same shall be built of fireproof material, and no fires shall be allowed in or about said tipple 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 workers 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. [1989 c 12 § 22; 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 semimonthly
- 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 whitewashed. [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 re-

quired 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 workers 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 or her duties concerning the safety of the mine and the persons employed therein be complied with, and the regulations prescribed for each class of workers under his or her charge be carried out in the strictest manner possible. [1989 c 12 § 23; 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 workers: 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 workers: 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 over-

[Title 78 RCW—page 24]

come 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 workers—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 workers: 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 nonflammable 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 flame-proof 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 workers—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 workers. 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 workers in the place toward which he or she is driving, so that they may find a place of safety. He or she shall also guard the passages on either side of his or her place at every shot, so that no person may come unaware upon it. [1989 c 12 § 24; 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. Workers 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. [1989 c 12 § 25; 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 escapement 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 shots [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.

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

Workman to examine working place: RCW 78.40.624.

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 or her engine and all machinery under his or her charge. He or she shall make himself or herself acquainted with the signal codes provided for in this chapter, and by the special rules of the mine.

He or she 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 workers are being lowered or raised he or she shall take special precautions to keep the engine well under control. [1989 c 12 § 26; 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 be 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 nonconflicting 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 workers—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 bimonthly 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 persons 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 persons 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. Workers serving on safety committee may be changed every two months.

Where a worker finds dangerous conditions that he or she cannot correct himself or herself, he or she 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 or she 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 workers' 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 persons the general safety committee shall have general supervision over all safety matters. [1989 c 12 § 27; 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 persons there shall be an outside committee consisting of the outside foreman, master mechanic and two employees selected by the persons working on the outside. Workers serving on outside safety committee may be changed every two months. Where a worker finds dangerous or unsafe conditions that he or she cannot correct himself or herself, he or she shall report it to the outside foreman. If the condition is not corrected in a reasonable time, he or she shall report it to one of the workers' 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 workers' 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 or her 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 workers in and around the mines. [1989 c 12 § 28; 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

Sections

78.44.010	Legislative finding.
78.44.011	Intent.
78.44.020	Purposes.
78.44.031	Definitions.
78.44.040	Administration of chapter—Rule-making authority.
78.44.045	Surface mining reclamation account.
78.44.050	Department may delegate to counties, cities, towns—Other laws not affected.
78.44.055	Surface mining of coal—Preemption of chapter by federal laws, programs.
78.44.060	Investigations, research, etc.—Dissemination of information.
78.44.070	Cooperation with other agencies—Receipt and expenditure of funds.
78.44.081	Reclamation permits required—Applications.
78.44.083	Reclamation permit—Refusal to issue.
78.44.085	Application fee—Annual permit fee—Modification—Appeals.

78.44.087	Performance security required—Department authority.
78.44.091	Reclamation plans—Approval process.
78.44.101	Joint reclamation plans may be required.
78.44.111	Segmental reclamation—Primary objective.
78.44.121	Reclamation setbacks—Exemption.
78.44.131	Reclamation specifics—Basic objective—Modifications for metals mining and milling operations—Timeline.
78.44.141	Reclamation—Minimum standards—Waiver.
78.44.151	Reclamation plans—Modification—SEPA.
78.44.161	Reclamation compliance—Inspection of disturbed area—Special inspection requirements for metals mining and milling operations.
78.44.171	Reclamation—Transfer of permits.
78.44.181	Reclamation—Report by permit holder on anniversary date.
78.44.190	Deficiencies—Order to rectify—Time extension.
78.44.200	Immediate danger—Emergency notice and order to rectify deficiencies—Emergency order to suspend surface mining.
78.44.210	Order to suspend surface mining—Injunction.
78.44.220	Declaration of abandonment—Reclamation—Subsequent miner.
78.44.230	Abandonment—Cancellation of the reclamation permit.
78.44.240	Reclamation by the department—Order to submit performance security—Cost recovery.
78.44.250	Fines—Civil penalties—Damage recovery.
78.44.260	Operating without permit—Penalty.
78.44.270	Appeals—Standing.
78.44.300	Reclamation awards—Recognition of excellence.
78.44.310	Reclamation consulting—No cost service.
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 an essential activity making an important contribution to the economic well-being of the state and nation. It is not possible to extract minerals without producing some environmental impacts. At the same time, comprehensive regulation of mining and thorough reclamation of mined lands is necessary to prevent or mitigate conditions that would be detrimental to the environment and to protect 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. Therefore, the legislature finds that a balance between appropriate environmental regulation and the production and conservation of minerals is in the best interests of the citizens of the state. [1993 c 518 § 2; 1970 ex.s. c 64 § 2.]

Captions—1993 c 518: "Captions used in this act do not constitute any part of the law." [1993 c 518 § 41.]

Severability—1993 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 518 § 43.]

Effective date—1993 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 518 § 44.]

78.44.011 Intent. The legislature recognizes that the extraction of minerals through surface mining has historically included regulatory involvement by both state and local governments.

It is the intent of the legislature to clarify that surface mining is an appropriate land use, subject to reclamation

authority exercised by the department of natural resources and land use and operation regulatory authority by counties, cities, and towns. [1993 c 518 § 1.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.020 Purposes. The purposes of this chapter are to:

(1) 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 reclamation at the earliest opportunity following completion of surface mining;

(2) Provide for the greatest practical degree of statewide consistency in the regulation of surface mines;

(3) Apportion regulatory authority between state and local governments in order to minimize redundant regulation of mining;

(4) Ensure that reclamation is consistent with local land use plans; and

(5) Ensure the power of local government to regulate land use and operations pursuant to *section 16 of this act. [1993 c 518 § 3; 1970 ex.s. c 64 § 3.]

*Reviser's note: 1993 c 518 § 16 was vetoed by the governor.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

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

(1) "Approved subsequent use" means the post surface-mining land use contained in an approved reclamation plan and approved by the local land use authority.

(2) "Completion of surface mining" means the cessation of mining and directly related activities in any segment of a surface mine that occurs when essentially all minerals that can be taken under the terms of the reclamation permit have been depleted except minerals required to accomplish reclamation according to the approved reclamation plan.

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

(4) "Determination" means any action by the department including permit issuance, reporting, reclamation plan approval or modification, permit transfers, orders, fines, or refusal to issue permits.

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas.

Disturbed areas do not include:

(a) Surface mine access roads unless these have characteristics of topography, drainage, slope stability, or ownership that, in the opinion of the department, make reclamation necessary; and

(b) Lands that have been reclaimed to all standards outlined in this chapter, rules of the department, any applicable SEPA document, and the approved reclamation plan.

(6) "Miner" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, including every public or governmental agency engaged in mining from the surface.

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

(8) "Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.

Operations specifically include:

(a) The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;

(b) Blasting, equipment maintenance, sorting, crushing, and loading;

(c) On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;

(d) Transporting minerals to and from the mine, on site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.

(9) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(10) "Permit holder" means 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 and/or the operation of surface mines, whether individually, jointly, or through subsidiaries, agents, employees, operators, or contractors who holds a state reclamation permit.

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment and areas under stockpiled materials. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

(12) "Reclamation setbacks" include those lands along the margins of surface mines wherein minerals and overburden shall be preserved in sufficient volumes to accomplish reclamation according to the approved plan and the minimum reclamation standards. Maintenance of reclamation setbacks may not preclude other mine-related activities within the reclamation setback.

(13) "Recycling" means the reuse of minerals or rock products.

(14) "Screening" consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of surface mining on adjacent properties and/or the environment.

(15) "Segment" means any portion of the surface mine that, in the opinion of the department:

(a) Has characteristics of topography, drainage, slope stability, ownership, mining development, or mineral distribution, that make reclamation necessary;

(b) Is not in use as part of surface mining and/or related activities; and

(c) Is larger than seven acres and has more than five hundred linear feet of working face except as provided in a segmental reclamation agreement approved by the department.

(16) "SEPA" means the state environmental policy act, chapter 43.21C RCW and rules adopted thereunder.

(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals from the surface results in:

(i) More than three acres of disturbed area;

(ii) Mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

(iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.

(b) Surface mines include areas where mineral extraction from the surface occurs by the auger method or by reworking mine refuse or tailings, when these activities exceed the size or height thresholds listed in (a) of this subsection.

(c) Surface mining shall exclude excavations or grading used:

(i) Primarily for on-site construction, on-site road maintenance, or on-site landfill construction;

(ii) For the purpose of public safety or restoring the land following a natural disaster;

(iii) For the purpose of removing stockpiles;

(iv) For forest or farm road construction or maintenance on site or on contiguous lands;

(v) For sand authorized by RCW 43.51.685; and

(vi) For underground mines.

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with other sediments within four vertical feet of the ground surface. [1993 c 518 § 4.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.040 Administration of chapter—Rule-making authority. The department of natural resources is charged with the administration of reclamation under this chapter. In order to implement and enforce this chapter, the department, under the administrative procedure act (chapter 34.05 RCW), may from time to time adopt those rules necessary to carry out the purposes of this chapter. [1993 c 518 § 6; 1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.045 Surface mining reclamation account. The surface mining reclamation account is created in the state treasury. Annual mining fees, funds received by the department from state, local, or federal agencies for research purposes, as well as other mine-related funds and fines received by the department shall be deposited into this account. The surface mine reclamation account may be used by the department only to:

(1) Administer its regulatory program pursuant to this chapter;

(2) Undertake research relating to surface mine regulation, reclamation of surface mine lands, and related issues; and

(3) Cover costs arising from appeals from determinations made under this chapter.

Fines, interest, and other penalties collected by the department under the provisions of this chapter shall be used to reclaim surface mines abandoned prior to 1971. [1993 c 518 § 10.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.050 Department may delegate to counties, cities, towns—Other laws not affected. The department shall have the exclusive authority to regulate surface mine reclamation except that, by contractual agreement, the department may delegate some or all of its enforcement authority to a county, city, or town. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations pursuant to *section 16 of this act, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state fisheries laws (Title 75 RCW), the state water allocation and use laws (chapters 90.03 and 90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70.119A RCW), or any other state statutes. [1993 c 518 § 7; 1970 ex.s. c 64 § 6.]

***Reviser's note:** 1993 c 518 § 16 was vetoed by the governor.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.055 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. Formerly RCW 78.44.175.]

78.44.060 Investigations, research, etc.—Dissemination of information. The department shall have the authority to conduct, authorize, and/or participate in investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1993 c 518 § 8; 1970 ex.s. c 64 § 7.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.070 Cooperation with other agencies—Receipt and expenditure of funds. The department may cooperate with other governmental and private agencies 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. [1993 c 518 § 9; 1970 ex.s. c 64 § 8.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.081 Reclamation permits required—Applications. After July 1, 1993, no miner or permit holder may engage in surface mining without having first obtained a reclamation permit from the department. Operating permits issued by the department between January 1, 1971, and June 30, 1993, shall be considered reclamation permits provided such permits substantially meet the protections, mitigations, and reclamation goals of RCW 78.44.091 and 78.44.131 within five years after July 1, 1993. State agencies and local government shall be exempt from this time limit for inactive sites. Prior to the use of an inactive site, the reclamation plan must be brought up to current standards. A separate permit shall be required for each noncontiguous surface mine. The reclamation permit shall consist of the permit forms and any exhibits attached thereto. The permit holder shall comply with the provisions of the reclamation permit unless waived and explained in writing by the department.

Prior to receiving a reclamation permit, an applicant must submit an application on forms provided by the department that shall contain the following information and shall be considered part of the reclamation permit:

- (1) Name and address of the legal landowner, or purchaser of the land under a real estate contract;
- (2) The name of the applicant and, if the applicants are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;
- (3) A reasonably accurate description of the minerals to be surface mined;
- (4) Type of surface mining to be performed;
- (5) Estimated starting date, date of completion, and date of completed reclamation of surface mining;
- (6) Size and legal description of the permit area and maximum lateral and vertical extent of the disturbed area;
- (7) Expected area to be disturbed by surface mining during (a) the next twelve months, and (b) the following twenty-four months;

(8) Any applicable SEPA documents; and

(9) Other pertinent data as required by the department.

The reclamation permit shall be granted for the period required to deplete essentially all minerals identified in the reclamation permit on the land covered by the reclamation plan. The reclamation permit shall be valid until the reclamation is complete unless the permit is canceled by the department. [1993 c 518 § 11.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.083 Reclamation permit—Refusal to issue. The department shall refuse to issue a reclamation permit if it is determined during the SEPA process that the impacts of a proposed surface mine cannot be adequately mitigated.

The department or county, city, or town may refuse to issue any other permit at any other location to any miner or permit holder who fails to rectify deficiencies set forth in an order of the department within the requisite time schedule. However, the department or county, city, or town shall issue all appropriate permits when all deficiencies are corrected at each surface mining site. [1993 c 518 § 33.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.085 Application fee—Annual permit fee—Modification—Appeals. (1) An applicant for a public or private reclamation permit shall pay an application fee to the department before being granted a surface mining permit. The amount of the application fee shall be six hundred fifty dollars.

(2) After June 30, 1993, each public or private permit holder shall pay an annual permit fee of six hundred fifty dollars. The annual permit fee shall be payable to the department on the first anniversary of the permit date and each year thereafter. Annual fees paid by a county for mines used exclusively for public works projects and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars. Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons.

(3) After July 1, 1995, the department may modify annual permit fees by rule if:

(a) The total annual permit fees are reasonably related to the approximate costs of administering the department's surface mining regulatory program;

(b) The annual fee does not exceed five thousand dollars; and

(c) The mines are small mines in remote areas that are used primarily for public service, then lower annual permit fees may be established.

(4) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fee may constitute grounds for an order to suspend surface mining or cancellation of the reclamation permit as provided in this chapter.

(5) All fees collected by the department shall be deposited into the surface mining reclamation account.

(6) If the department delegates enforcement responsibilities to a county, city, or town, the department may allocate

funds collected under this section to the county, city, or town. [1996 c 70 § 1; 1993 c 518 § 14.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.087 Performance security required—

Department authority. (1) The department shall not issue a reclamation permit until the applicant has deposited with the department an acceptable performance security on forms prescribed and furnished by the department. A public or governmental agency shall not be required to post performance security nor shall a permit holder be required to post surface mining performance security with more than one state or local agency.

(2) This performance security may be:

- (a) Bank letters of credit acceptable to the department;
- (b) A cash deposit;
- (c) Negotiable securities acceptable to the department;
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank on an assignment form prescribed by the department;
- (f) Assignments of interests in real property within the state of Washington; or
- (g) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW and authorized by the department.

(3) The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules adopted under it.

(4) The department shall have the authority to determine the amount of the performance security using a standardized performance security formula developed by the department. The amount of the security shall be determined by the department and based on the estimated costs of completing reclamation according to the approved reclamation plan or minimum standards and related administrative overhead for the area to be surface mined during (a) the next twelve-month period, (b) the following twenty-four months, and (c) any previously disturbed areas on which the reclamation has not been satisfactorily completed and approved.

(5) The department may increase or decrease the amount of the performance security at any time to compensate for a change in the disturbed area, the depth of excavation, a modification of the reclamation plan, or any other alteration in the conditions of the mine that affects the cost of reclamation. The department may, for any reason, refuse any performance security not deemed adequate.

(6) Liability under the performance security shall be maintained until reclamation is completed according to the approved reclamation plan to the satisfaction of the department unless released as hereinafter provided. Liability under the performance security may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute performance security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(7) Any interest or appreciation on the performance security shall be held by the department until reclamation is completed to its satisfaction. At such time, the interest shall

be remitted to the permit holder; except that such interest or appreciation may be used by the department to effect reclamation in the event that the permit holder fails to comply with the provisions of this chapter and the costs of reclamation exceed the face value of the performance security.

(8) Except as provided in this section, no other state agency or local government shall require performance security for the purposes of surface mine reclamation and only one agency of government shall require and hold the performance security. The department may enter into written agreements with federal agencies in order to avoid redundant bonding of surface mines straddling boundaries between federally controlled and other lands within Washington state. [1995 c 223 § 3; 1994 c 232 § 23; 1993 c 518 § 15.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31: See RCW 78.56.901.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.091 Reclamation plans—Approval process.

An applicant shall provide a reclamation plan and copies acceptable to the department prior to obtaining a reclamation permit. The department shall have the sole authority to approve reclamation plans. Reclamation plans or modified reclamation plans submitted to the department after June 30, 1993, shall meet or exceed the minimum reclamation standards set forth in this chapter and by the department in rule. Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

(1) A written narrative describing the proposed mining and reclamation scheme with:

(a) A statement of a proposed subsequent use of the land after reclamation that is consistent with the local land use designation. Approval of the reclamation plan shall not vest the proposed subsequent use of the land;

(b) If the permit holder is not the sole landowner, a copy of the conveyance or a written statement that expressly grants or reserves the right to extract minerals by surface mining methods;

(c) A simple and accurate legal description of the permit area and disturbed areas;

(d) The maximum depth of mining;

(e) A reasonably accurate description of the minerals to be mined;

(f) A description of the method of mining;

(g) A description of the sequence of mining that will provide, within limits of normal procedures of the industry, for completion of surface mining and associated disturbance on each portion of the permit area so that reclamation can be initiated at the earliest possible time on each segment of the mine;

(h) A schedule for progressive reclamation of each segment of the mine;

(i) Where mining on flood plains or in river or stream channels is contemplated, a thoroughly documented hydro-

geologic evaluation that will outline measures that would protect against or would mitigate avulsion and erosion as determined by the department;

(j) Where mining is contemplated within critical aquifer recharge areas, special protection areas as defined by chapter 90.48 RCW and implementing rules, public water supply watersheds, sole source aquifers, wellhead protection areas, and designated aquifer protection areas as set forth in chapter 36.36 RCW, a thoroughly documented hydrogeologic analysis of the reclamation plan may be required; and

(k) Additional information as required by the department including but not limited to: The positions of reclamation setbacks and screening, conservation of topsoil, interim reclamation, revegetation, postmining erosion control, drainage control, slope stability, disposal of mine wastes, control of fill material, development of wetlands, ponds, lakes, and impoundments, and rehabilitation of topography.

(2) Maps of the surface mine showing:

(a) All applicable data required in the narrative portion of the reclamation plan;

(b) Existing topographic contours;

(c) Contours depicting specifications for surface gradient restoration appropriate to the proposed subsequent use of the land and meeting the minimum reclamation standards;

(d) Locations and names of all roads, railroads, and utility lines on or adjacent to the area;

(e) Locations and types of proposed access roads to be built in conjunction with the surface mining;

(f) Detailed and accurate boundaries of the permit area, screening, reclamation setbacks, and maximum extent of the disturbed area; and

(g) Estimated depth to ground water and the locations of surface water bodies and wetlands both prior to and after mining.

(3) At least two cross sections of the mine including all applicable data required in the narrative and map portions of the reclamation plan.

(4) Evidence that the proposed surface mine has been approved under local zoning and land use regulations.

(5) Written approval of the reclamation plan by the landowner for mines permitted after June 30, 1993.

(6) Other supporting data and documents regarding the surface mine as reasonably required by the department.

If the department refuses to approve a reclamation plan in the form submitted by an applicant or permit holder, it shall notify the applicant or permit holder stating the reasons for its determination and describe such additional requirements to the applicant or permit holder's reclamation plan as are necessary for the approval of the plan by the department. If the department refuses to approve a complete reclamation plan within one hundred twenty days, the miner or permit holder may appeal this determination under the provisions of this chapter.

Only insignificant deviations may occur from the approved reclamation plan without prior written approval by the department for the proposed change.

The department retains the authority to require that the reclamation plan be updated to the satisfaction of the department at least every ten years. [1993 c 518 § 12.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.101 Joint reclamation plans may be required.

Where two or more surface mines join along a common boundary, the department may require submission of a joint reclamation plan in order to provide for optimum reclamation or to avoid waste of mineral resources. Such joint reclamation plans may be in the form of a single collaborative plan submitted by all affected permit holders or as individual reclamation plans in which the schedule of reclamation, finished contours, and revegetation match reclamation plans of adjacent permit holders. [1993 c 518 § 13.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.111 Segmental reclamation—Primary objective.

The permit holder shall reclaim each segment of the mine within two years of completion of surface mining on that segment except as provided in a segmental reclamation agreement approved in writing by the department. The primary objective of a segmental reclamation agreement should be to enhance final reclamation. [1993 c 518 § 5.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.121 Reclamation setbacks—Exemption.

Reclamation setbacks shall be as follows unless waived by the department:

(1) The reclamation setback for unconsolidated deposits within mines permitted after June 30, 1993, shall be equal to the maximum anticipated height of the adjacent working face or as determined by the department. Setbacks and buffers may be destroyed as part of final reclamation of each segment if approved by the department.

(2) The minimum reclamation setback for consolidated materials within mines permitted after June 30, 1993, shall be thirty feet or as determined by the department.

(3) An exemption from this section may be granted by the department following a written request. The department may consider submission of a plan for backfilling acceptable to the department, a geotechnical slope-stability study, proof of a dedicated source of fill materials, written approval of contiguous landowners, and other information before granting an exemption. [1993 c 518 § 18.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.131 Reclamation specifics—Basic objective—Modifications for metals mining and milling operations—

Timeline. The need for, and the practicability of, reclamation shall control the type and degree of reclamation in any specific instance. However, the basic objective of reclamation is to reestablish on a continuing basis the vegetative cover, slope stability, water conditions, and safety conditions suitable to the proposed subsequent use consistent with local land use plans for the surface mine site.

Each permit holder shall comply with the minimum reclamation standards in effect on the date the permit was issued and any additional reclamation standards set forth in the approved reclamation plan. The department may modify, on a site specific basis, the minimum reclamation standards for metals mining and milling operations regulated under

chapter 232, Laws of 1994 in order to achieve the reclamation and closure objectives of that chapter. The basic objective of reclamation for these operations is the reestablishment on a continuing basis of vegetative cover, slope stability, water conditions, and safety conditions.

Reclamation activities, particularly those relating to control of erosion and mitigation of impacts of mining to adjacent areas, 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 of surface mining on any segment of the permit area.

All 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 reclamation permit is in force.

The department may by contract delegate enforcement of provisions of reclamation plans to counties, cities, and towns. A county, city, or town performing enforcement functions may not impose any additional fees on permit holders. [1994 c 232 § 24; 1993 c 518 § 20.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31: See RCW 78.56.901.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.141 Reclamation—Minimum standards—Waiver. Reclamation of surface mines permitted after June 30, 1993, and reclamation of surface mine segments addressed by reclamation plans modified after June 30, 1994, shall meet the following minimum standards except as waived in writing by the department.

(1) Prior to surface mining, permit holders shall carefully stockpile all topsoil on the site for use in reclamation, or immediately move topsoil to reclaim adjacent segments, except when the approved subsequent use does not require replacing the topsoil. Topsoil needed for reclamation shall not be sold as a mineral nor mixed with sterile soils. Stockpiled materials used as screening shall not be used for reclamation until such time as the appropriate county or municipal government has given its approval.

(2) The department may require that clearly visible, permanent monuments delineating the permit boundaries and maximum extent of the disturbed area be set at appropriate places around the mine site. The permit holder shall maintain the monuments until termination of the reclamation permit.

(3) All minimum reclamation standards may be waived in writing by the department in order to accommodate unique and beneficial reclamation schemes such as parks, swimming facilities, buildings, and wildlife reserves. Such waivers shall be granted only after written approval by the department of a reclamation plan describing the variances to the minimum reclamation standards, receipt of documentation of SEPA compliance, and written approvals from the landowner and by the local land use authority.

(4) All surface-mined slopes shall be reclaimed to the following minimum standards:

(a) In surface mines in soil, sand, gravel, and other unconsolidated materials, all reclaimed slopes shall:

(i) Have varied steepness;

(ii) Have a sinuous appearance in both profile and plan view;

(iii) Have no large rectilinear topographic elements;

(iv) Generally have slopes of between 2.0 and 3.0 feet horizontal to 1.0 foot vertical or flatter except in limited areas where steeper slopes are necessary in order to create sinuous topography and to control drainage;

(v) Not exceed 1.5 feet horizontal to 1.0 foot vertical except as necessary to blend with adjacent natural slopes;

(vi) Be compacted if significant backfilling is required to produce the final reclaimed slopes and if the department determines that compaction is necessary.

(b) Slopes in consolidated materials shall have no prescribed slope angle or height, but where a severely hazardous condition is created by mining and that is not indigenous to the immediate area, the slopes shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper slopes shall be acceptable in areas where evidence is submitted that demonstrates that the geologic or topographic characteristics of the site preclude reclamation of slopes to such angle or height or that such slopes constitute an acceptable subsequent use under local land use regulations.

(c) Surface mines in which the seasonal or permanent water tables have been penetrated, thereby creating swamps, ponds, or lakes useful for recreational, wildlife habitat, water quality control, or other beneficial wetland purposes shall be reclaimed in the following manner:

(i) For slopes that are below the permanent water table in soil, sand, gravel, and other unconsolidated materials, the slope angle shall be no steeper than 1.5 feet horizontal to 1.0 foot vertical;

(ii) Generally, solid rock banks shall be shaped so that a person can escape from the water, however steeper slopes and lack of water egress shall be acceptable in rural, forest, or mountainous areas or where evidence is provided that such slopes would constitute an acceptable subsequent use under local land use regulations;

(iii) Both standpipes and armored spillways or other measures to prevent undesirable overflow or seepage shall be provided to stabilize all such water bodies within the disturbed area; and

(iv) Where lakes, ponds, or swamps are created, the permit holder shall provide measures to establish a beneficial wetland by developing natural wildlife habitat and incorporating such measures as irregular shoreline configurations, sinuous bathymetry and shorelines, varied water depths, peninsulas, islands, and subaqueous areas less than 1.5 foot deep during summer low-water levels. Clay-bearing material placed below water level may be required to avoid creating sterile wetlands.

(d) Final topography shall generally comprise sinuous contours, chutes and buttresses, spurs, and rolling mounds and hills, all of which shall blend with adjacent topography to a reasonable extent. Straight planar slopes and right angles should be avoided.

(e) The floors of mines shall generally grade gently into postmining drainages to preclude sheet-wash erosion during intense precipitation, except where backgrading is appropriate for drainage control, to establish wetlands, or to trap sediment.

(f) Topsoil shall be restored as necessary to promote effective revegetation and to stabilize slopes and mine floors.

Where limited topsoil is available, topsoil shall be placed and revegetated in such a way as to ensure that little topsoil is lost to erosion.

(g) Where surface mining has exposed natural materials that may create polluting conditions, including but not limited to acid-forming coals and metalliferous rock or soil, such conditions shall be addressed according to a method approved by the department. The final ground surface shall be graded so that surface water drains away from these materials.

(h) All grading and backfilling shall be made with nonnoxious, noncombustible, and relatively incompactible solids unless the permit holder provides:

(i) Written approval from all appropriate solid waste regulatory agencies; and

(ii) Any and all revisions to such written approval during the entire time the reclamation permit is in force.

(i) Final reclaimed slopes should be left roughly graded, preserving equipment tracks, depressions, and small mounds to trap clay-bearing soil and promote natural revegetation. Where reasonable, final equipment tracks should be oriented in order to trap soil and seeds and to inhibit erosion.

(j) Pit floors should be bulldozed or ripped to foster revegetation.

(5) Drainages shall be graded and contain adequate energy dissipation devices so that essentially natural conditions of water velocity, volume, and turbidity are reestablished within six months of reclamation of each segment of the mine. Ditches and other artificial drainages shall be constructed on each reclaimed segment to control surface water, erosion, and siltation and to direct runoff to a safe outlet. Diversion ditches including but not limited to channels, flumes, tightlines and retention ponds shall be capable of carrying the peak flow at the mine site that has the probable recurrence frequency of once in twenty-five years as determined from data for the twenty-five year, twenty-four hour precipitation event published by the national oceanic and atmospheric administration. The grade of such ditches and channels shall be constructed to limit erosion and siltation. Natural and other drainage channels shall be kept free of equipment, wastes, stockpiles, and overburden.

(6) Impoundment of water shall be an acceptable reclamation technique provided that approvals of other agencies with jurisdiction are obtained and:

(a) Proper measures are taken to prevent undesirable seepage that could cause flooding outside the permitted area or adversely affect the stability of impoundment dikes or adjacent slopes;

(b) Both standpipes and armored spillways or other measures necessary to control overflow are provided.

(7) Revegetation shall be required as appropriate to stabilize slopes, generate new topsoil, reduce erosion and turbidity, mask rectilinear contours, and restore the scenic value of the land to the extent feasible as appropriate to the approved subsequent use. Although the scope of and necessity for revegetation will vary according to the geography, precipitation, and approved subsequent use of the site, the objective of segmental revegetation is to reestablish self-sustaining vegetation and conditions of slope stability, surface water quality, and appearance before release of the reclamation permit. Revegetation shall normally meet the following standards:

(a) Revegetation shall commence during the first proper growing season following restoration of slopes on each segment unless the department has granted the permit holder a written time extension.

(b) In eastern Washington, the permit holder may not be able to achieve continuous ground cover owing to arid conditions or sparse topsoil. However, revegetation shall be as continuous as reasonably possible as determined by the department.

(c) Revegetation generally shall include but not be limited to diverse evergreen and deciduous trees, shrubs, grasses, and deep-rooted ground cover.

(i) For western Washington, nitrogen-fixing species including but not limited to alder, white clover, and lupine should be included in dry areas. In wet areas, tubers, sedges, wetland grasses, willow, cottonwood, cedar, and alder are appropriate.

(ii) In eastern Washington, lupine, white clover, Russian olive, black locust, junipers, and pines are among appropriate plants. In wet areas, cottonwood, tubers, and sedges are appropriate.

(d) The requirements for revegetation may be reduced or waived by the department where erosion will not be a problem in rural areas where precipitation exceeds thirty inches per annum, or where revegetation is inappropriate for the approved subsequent use of the surface mine.

(e) In areas where revegetation is critical and conditions are harsh, the department may require irrigation, fertilization, and importation of clay or humus-bearing soils to establish effective vegetation.

(f) The department may refuse to release a reclamation permit or performance security until it deems that effective revegetation has commenced. [1993 c 518 § 21.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.151 Reclamation plans—Modification—SEPA. The department and the permit holder may modify the reclamation plan at any time during the term of the permit for any of the following reasons:

(1) To modify the requirements so that they do not conflict with existing or new laws;

(2) If the department determines that the previously adopted reclamation plan is impossible or impracticable to implement and maintain; or

(3) The previously approved reclamation plan is not accomplishing the intent of this chapter as determined by the department.

Modified reclamation plans shall be reviewed by the department as lead agency under SEPA. Such SEPA analyses shall consider only those impacts relating directly to the proposed modifications. Copies of proposed and approved modifications shall be sent to the appropriate county, city, or town. [1993 c 518 § 23.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.161 Reclamation compliance—Inspection of disturbed area—Special inspection requirements for metals mining and milling operations. The department may order at any time an inspection of the disturbed area to

determine if the miner or permit holder has complied with the reclamation permit, rules, and this chapter.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining operations at least quarterly, unless prevented by inclement weather conditions, in order to ensure that the permit holder is in compliance with the reclamation permit, rules, and this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with the reclamation permit, rules, and this chapter. [1994 c 232 § 22; 1993 c 518 § 25.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.171 Reclamation—Transfer of permits.

Reclamation permits shall be transferred to a subsequent permit holder and the department shall release the former permit holder from the duties imposed by this chapter if:

(1) Both permit holders comply with all rules of the department addressing requirements for transferring a permit; and

(2) Unless waived by the department, the mine and all others operated by both the former and subsequent permit holders and their principal officers or owners are in compliance with this chapter and rules. [1993 c 518 § 22.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.181 Reclamation—Report by permit holder on anniversary date. On the anniversary date of the reclamation permit and each year thereafter until reclamation is completed and approved, the permit holder shall file a report of activities completed during the preceding year. The report shall be on a form prescribed by the department. [1993 c 518 § 24.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.190 Deficiencies—Order to rectify—Time extension. The department may issue an order to rectify deficiencies when a miner or permit holder is conducting surface mining in any manner not authorized by:

- (1) This chapter;
- (2) The rules adopted by the department;
- (3) The authorized reclamation plan; or
- (4) The reclamation permit.

The order shall describe the deficiencies and shall require that the miner or permit holder correct all deficiencies no later than sixty days from issuance of the order. The department may extend the period for correction for delays clearly beyond the miner or permit holder's control, but only when the miner or permit holder is, in the opinion of the department, making every reasonable effort to comply. [1993 c 518 § 26.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.200 Immediate danger—Emergency notice and order to rectify deficiencies—Emergency order to suspend surface mining. When the department finds that a permit holder is conducting surface mining in any manner not authorized by:

- (1) This chapter;
- (2) The rules adopted by the department;
- (3) The approved reclamation plan; or
- (4) The reclamation permit;

and that activity has created a situation involving an immediate danger to the public health, safety, welfare, or environment requiring immediate action, the department may issue an emergency notice and order to rectify deficiencies, and/or an emergency order to suspend surface mining. These orders shall be effective when entered. The department may take such action as is necessary to prevent or avoid the danger to the public health, safety, welfare, or environment that justifies use of emergency adjudication. The department shall give such notice as is practicable to the permit holder or miner who is required to comply with the order. The order shall comply with the requirements of the administrative procedure act.

Regulations of surface mining operations administered by other state and local agencies shall be preempted by this section to the extent that the time schedule and procedures necessary to rectify the emergency situation, as determined by the department, conflict with such local regulation. [1993 c 518 § 27.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.210 Order to suspend surface mining—Injunction. Upon the failure of a miner or permit holder to comply with a department order to rectify deficiencies, the department may issue an order to suspend surface mining when a miner or permit holder is conducting surface mining in any manner not authorized by:

- (1) This chapter;
- (2) The rules adopted by the department;
- (3) The approved reclamation plan;
- (4) The reclamation permit; or
- (5) If the miner or permit holder fails to comply with any final order of the department.

The order to suspend surface mining shall require the miner or permit holder to suspend part or all of the miner's or permit holder's mining operations until the conditions resulting in the issuance of the order have been mitigated to the satisfaction of the department.

The attorney general may take the necessary legal action to enjoin, or otherwise cause to be stopped, surface mining in violation of an order to suspend surface mining. [1993 c 518 § 28.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.220 Declaration of abandonment—Reclamation—Subsequent miner. The department may issue a declaration of abandonment when it determines that all surface mining has ceased for a period of one hundred eighty consecutive days not set forth in the permit holder's reclamation plan or when, by reason of inspection of the

permit area, or by any other means, the department determines that the mine has in fact been abandoned by the permit holder except that abandonment shall not include normal interruptions of surface mining resulting from labor disputes, economic conditions associated with lack of smelting capacity or availability of appropriate transportation, war, social unrest, demand for minerals, maintenance and repairs, and acts of God.

Following a declaration of abandonment, the department shall require the permit holder to complete reclamation in accordance with this chapter. If the permit holder fails to do so, the department shall proceed to do the necessary reclamation work pursuant to RCW 78.44.240.

If another miner applies for a permit on a site that has been declared abandoned, the department may, in its discretion, cancel the reclamation permit of the permit holder and issue a new reclamation permit to the applicant. The department shall not issue a new permit unless it determines that such issuance will be an effective means of assuring that the site will ultimately be reclaimed. The applicant must agree to assume the reclamation responsibilities left unfinished by the first miner, in addition to meeting all requirements for issuance of a new permit. [1993 c 518 § 29.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.230 Abandonment—Cancellation of the reclamation permit. When the department determines that a surface mine has been abandoned, it may cancel the reclamation permit. The permit holder shall be informed of such actions by a department notification of illegal abandonment and cancellation of the reclamation permit. [1993 c 518 § 30.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.240 Reclamation by the department—Order to submit performance security—Cost recovery. The department may, with the staff, equipment, and material under its control, or by contract with others, reclaim the disturbed areas when it finds that reclamation has not occurred in any segment of a surface mine within two years of completion of mining or of declaration of abandonment and the permit holder is not actively pursuing reclamation.

If the department intends to undertake the reclamation, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.44.087. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security with reclamation of the site according to the approved reclamation plan or according to a plan developed by the department that meets the minimum reclamation standards.

The department shall keep a record of all expenses incurred in carrying out any reclamation project or activity authorized under this section, including:

- (1) Reclamation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and
- (3) Administrative and legal expenses related to reclamation of the surface mine.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1993 c 518 § 31.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.250 Fines—Civil penalties—Damage recovery. Each order of the department may impose a fine or fines in the event that a miner or permit holder fails to obey the order of the department. When a miner or permit holder fails to comply with an order of the department, the miner or permit holder shall be subject to a civil penalty in an amount not more than ten thousand dollars for each violation plus interest based upon a schedule of fines set forth by the department in rule. Procedures for imposing a penalty and setting the amount of the penalty shall be as provided in RCW 90.48.144. Each day on which a miner or permit holder continues to disobey any order of the department shall constitute a separate violation. If the penalty and interest is not paid to the department after it becomes due and payable, the attorney general, upon the request of the department, may bring an action in the name of the state of Washington to recover the penalty, interest, mitigation for environmental damages, and associated legal fees. Decisions of the department are subject to review by the pollution control hearings board.

All fines, interest, penalties, and other damage recovery costs from mines regulated by the department shall be credited to the surface mining reclamation account. [1993 c 518 § 32.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.260 Operating without permit—Penalty. Any miner or permit holder conducting surface mining within the state of Washington without a valid reclamation permit shall be guilty of a gross misdemeanor. Surface mining outside of the permitted area shall constitute illegal mining without a valid reclamation permit. Each day of mining without a valid reclamation permit shall constitute a separate offense. [1993 c 518 § 34; 1970 ex.s. c 64 § 16. Formerly RCW 78.44.150.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.270 Appeals—Standing. Appeals from department determinations under this chapter shall be made as follows:

Appeals from department determinations made under this chapter shall be made under the provisions of the Administrative Procedure Act (chapter 34.05 RCW), and shall be considered an adjudicative proceeding within the meaning of the Administrative Procedure Act, chapter 34.05 RCW. Only a person aggrieved within the meaning of RCW 34.05.530 has standing and can file an appeal. [1993 c 518 § 35; 1989 c 175 § 166; 1970 ex.s. c 64 § 18. Formerly RCW 78.44.170.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

78.44.300 Reclamation awards—Recognition of excellence. The department shall create reclamation awards in recognition of excellence in reclamation or reclamation research. Such awards shall be presented to individuals, miners, operators, companies, or government agencies performing exemplary surface mining reclamation in the state of Washington. The department shall designate a percent of the state annual fees as funding of the awards. [1993 c 518 § 37.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.310 Reclamation consulting—No cost service. The department may establish a no-cost consulting service within the department to assist miners, permit holders, local government, and the public in technical matters related to mine regulation, mine operations, and reclamation. The department may prepare concise, printed information for the public explaining surface mining activities, timelines for permits and reviews, laws, and the role of governmental agencies involved in surface mining, including how to contact all regulators. The department shall not be held liable for any negligent advice. [1993 c 518 § 38.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.910 Previously mined land. Miners and permit holders shall not be required to reclaim any segment where all surface mining was completed prior to January 1, 1971. However, the department shall make an effort to reclaim previously abandoned or completed surface mining segments. [1993 c 518 § 36; 1970 ex.s. c 64 § 22.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

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	
78.52.001	Declaration of purpose.
78.52.010	Definitions.
78.52.025	Hearings and meetings of department.
78.52.030	Employment of personnel.
78.52.031	Conduct of hearings—Evidence.
78.52.032	Hearing examiners.
78.52.033	Failure of witness to attend or testify—Contempt.
78.52.035	Attorney for department.
78.52.037	State oil and gas supervisor—Deputy supervisors—Employment of personnel.
78.52.040	Duty and powers of department—In general.
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.
78.52.050	Rules, regulations, and orders—Time and place of hearing—Notices.
78.52.070	Hearing upon petition—Time for action.
78.52.100	Records—Copies as evidence—Copies to be furnished.
78.52.120	Drilling permit required—Notice.
78.52.125	Environmental impact statement required when drilling affects surface waters of the state—Drilling may be denied, when.
78.52.130	Waste prohibited.
78.52.140	Carbon black and carbon products—Permit required.
78.52.150	Investigations authorized.
78.52.155	Investigations—Powers and duties.
78.52.200	Development units authorized for known pools.
78.52.205	Development units to be prescribed for pool after discovery—Temporary development units.
78.52.210	Development units—Size and shape.
78.52.220	Development units—Location of well.
78.52.230	Development units—Order must cover entire pool—Modifications.
78.52.240	Development units—Pooling of interests.
78.52.245	Pooling order—Allocation of production.
78.52.250	Pooled interests in well in development unit—Allocation of costs—Rights of owners.
78.52.253	Pooling agreement, offer to pool, pooling order—Fairness to nonconsenting, unleased owners.
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.
78.52.257	Dissolution of pooling order—Interests covered by terminated lease—Modification or termination of pooling order—Extension of dissolution of pooling order.
78.52.260	"Wildcat" or "exploratory" well data confidential.
78.52.270	Limitation of production to "oil allowable"—Proration.
78.52.280	Determining market demand—No undue discrimination in proration of "allowable."
78.52.290	Limitation of production to "gas allowable"—Proration.
78.52.300	Limitation of gas production from one pool.
78.52.310	Proration of allowable production in pool—Publication of orders—Emergency orders.
78.52.320	Compliance with limitation or proration required.
78.52.330	Unit operation of separately owned tracts.
78.52.335	Unit operation of pools.
78.52.345	Ratable purchase of oil from owners or operators of pool required.
78.52.355	Ratable purchase of gas from owners or operators of pool required.
78.52.365	Enforcement of RCW 78.52.345 and 78.52.355.
78.52.450	Participation of public lands in unit plan.
78.52.460	Unit plan not deemed monopolistic.
78.52.463	Suspension of operations for violation—Notice—Order—Hearing—Stay of order.
78.52.467	Illegal oil, gas, or product—Sale, purchase, etc., prohibited—Seizure and sale—Deposit of proceeds.
78.52.470	Objections to order—Hearing required—Modification of order.

- 78.52.480 Appeal from order or decision—Rights of department.
 78.52.490 Appeal—How taken.
 78.52.530 Violations—Injunctions.
 78.52.540 Violations—Injunctions by private party.
 78.52.550 Violations—Penalty.
 78.52.900 Short title.
 78.52.910 Construction—1951 c 146.
 78.52.920 Severability—1951 c 146.
 78.52.921 Severability—1983 c 253.

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 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 department for the transportation or the delivery of oil, gas, or product.
- (2) "Department" means the department of natural resources.
- (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 department.

(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, herself, 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 department'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 department.

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

(19) "Protect correlative rights" means that the action or regulation by the department 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 department;

(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. [1994 sp.s. c 9 § 809; 1983 c 253 § 2; 1951 c 146 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.025 Hearings and meetings of department.

The department shall hold hearings or meetings at such times and places as may be found by the department to be necessary to carry out its duties. The department may establish its own rules for the conduct of public hearings or meetings consistent with other applicable law. [1994 sp.s. c 9 § 810; 1983 c 253 § 3; 1951 c 146 § 5. Formerly RCW 78.52.060.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.030 Employment of personnel. The department shall employ all personnel necessary to carry out the provisions of this chapter. [1994 sp.s. c 9 § 811; 1951 c 146 § 6.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.031 Conduct of hearings—Evidence. The department may subpoena witnesses, administer oaths, and 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 department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person 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 the department 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 or her objection, he or she may be required to testify or produce evidence, documentary or otherwise before the department 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. [1994 sp.s. c 9 § 812; 1983 c 253 § 5; 1951 c 146 § 7. Formerly RCW 78.52.080.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.032 Hearing examiners. In addition to the powers and authority, either express or implied, granted to the department by virtue of the laws of this state, the department may, in prescribing its rules of order or procedure in connection with hearings or other proceedings before the department, provide for the appointment of one or more examiners to conduct a hearing or hearings with respect to any matter properly coming before the department and to make reports and recommendations to the department with respect thereto. Any employee of the department or any other person designated by the commissioner of public lands, or the supervisor when this power is so delegated, may serve as an examiner. The department shall adopt rules governing hearings to be conducted before examiners. [1994 sp.s. c 9 § 813; 1983 c 253 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated, any superior court in the state, upon the application of the department, may compel the person to comply with such subpoena, and to attend before the department and produce

such records, books, and documents for examination, and to give his or her 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. [1994 sp.s. c 9 § 814; 1951 c 146 § 8. Formerly RCW 78.52.090.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.035 Attorney for department. The attorney general shall be the attorney for the department, but in cases of emergency, the department may call upon the prosecuting attorney of the county where the action is to be brought, or defended, to represent the department until such time as the attorney general may take charge of the litigation. [1994 sp.s. c 9 § 815; 1951 c 146 § 9. Formerly RCW 78.52.110.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.037 State oil and gas supervisor—Deputy supervisors—Employment of personnel. 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 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 department. [1994 sp.s. c 9 § 816; 1983 c 253 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.040 Duty and powers of department—In general. The department shall administer and enforce the provisions of this chapter by the adoption of policies, and all rules, regulations, and orders promulgated hereunder, and the department has jurisdiction, power, and authority, over all persons and property, public and private, necessary to enforce effectively such duty. [1994 sp.s. c 9 § 817; 1983 c 253 § 6; 1951 c 146 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department may 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 department 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 department by general rule. The public hearing shall be at the time and in the manner and at the place prescribed by the department, 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 department hearings, rulings, policies, and orders. The department shall establish and maintain a mailing list for this purpose. Substantial compliance with these mailing requirements is deemed compliance with this section. [1994 sp.s. c 9 § 818; 1983 c 253 § 7; 1951 c 146 § 11.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.070 Hearing upon petition—Time for action. Any interested person shall have the right to have the department call a hearing for the purpose of taking action with respect to any matter within the jurisdiction of the department 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 department, 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. [1994 sp.s. c 9 § 819; 1951 c 146 § 12.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.100 Records—Copies as evidence—Copies to be furnished. All rules, regulations, policies, and orders of the department, 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 department 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 department, certified by the commissioner of public lands, shall be received in evidence in all courts of this state with the same effect as the original. The department is hereby required to furnish to any person upon request, copies of all rules, regulations, policies, orders, and amendments thereof. [1994 sp.s. c 9 § 820; 1983 c 253 § 8; 1951 c 146 § 13.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department upon such form as the department 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 foot to seven thousand feet, five hundred dollars;
- (3) From seven thousand one foot 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 department 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 department of objections or comments as to the proposed use of the surface by the applicant, and the department 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 provided in this section. The department may 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 department may deem necessary or convenient to effectuate the purposes of this chapter.

The department 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 department 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 department. 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 department. [1994 sp.s. c 9 § 821; 1983 c 253 § 11; 1951 c 146 § 14.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 the department of natural resources a report examining the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground

waters of the state. If safeguards acceptable to the department cannot be provided the drilling permit shall be denied. [1994 sp.s. c 9 § 822; 1971 ex.s. c 180 § 8.]

Reviser's note: The definitions of RCW 90.56.010 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 90.56.050 and 90.56.900.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.56.900.

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 department, 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 department 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. [1994 sp.s. c 9 § 823; 1951 c 146 § 16.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.150 Investigations authorized. The department shall 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 department. [1994 sp.s. c 9 § 824; 1951 c 146 § 17.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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

(2) The department 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 fresh-water supplies by oil, gas, or saltwater and to prevent blowouts, cavings, see pages, 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 department, orders of 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 department, 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 department or its agents at all reasonable times, and that every person file with the department 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 department 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 department 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 department to be in excess of or in violation of "oil allowable" or "gas allowable."

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

(6) The department shall regulate oil and gas exploration and drilling activities so as to prevent or remedy unreasonable or excessive waste or surface destruction. [1994 sp.s. c 9 § 825; 1983 c 253 § 9.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department, upon its own motion or upon application of interested persons, shall

[Title 78 RCW—page 52]

establish development units covering any known pool. Development units shall be of uniform size and shape for the entire pool unless the department finds that it must make an exception due to geologic, geographic, or other factors. When necessary, the department 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. [1994 sp.s. c 9 § 826; 1983 c 253 § 12; 1951 c 146 § 22.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department, a hearing shall be held and the department 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 department 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 department 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. [1994 sp.s. c 9 § 827; 1983 c 253 § 13.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department shall fix a development unit of not more than one hundred sixty acres for any pool deemed by the department to be an oil reservoir, or of six hundred forty acres for any pool deemed by the department to be a gas reservoir, plus a ten percent tolerance in either case to allow for irregular sections. The department 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 department 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 department 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. [1994 sp.s. c 9 § 828; 1983 c 253 § 14; 1951 c 146 § 23.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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 department may 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 department 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. [1994 sp.s. c 9 § 829; 1983 c 253 § 15; 1951 c 146 § 24.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department from time to time to include additional areas determined to be underlaid by such pool. When the department 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 department 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. [1994 sp.s. c 9 § 830; 1983 c 253 § 16; 1951 c 146 § 25.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department, 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. [1994 sp.s. c 9 § 831; 1983 c 253 § 17; 1951 c 146 § 26.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department finds that allocation on a surface acreage basis does not allocate to each tract its fair share, the department shall allocate the production so that each tract will receive its fair share. [1994 sp.s. c 9 § 832; 1983 c 253 § 18.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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 department 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 department 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 department 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. [1994 sp.s. c 9 § 833; 1983 c 253 § 19; 1951 c 146 § 27.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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 department, 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. [1994 sp.s. c 9 § 834; 1983 c 253 § 22.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.260 "Wildcat" or "exploratory" well data confidential. Whenever the department requires 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 department 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 department may 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. [1994 sp.s. c 9 § 835; 1951 c 146 § 28.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department shall limit the oil which may be currently produced in this state to an amount, designated the "oil allowable." The department 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 department 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 department shall prorate to such pool the maximum amount which can be efficiently produced currently without waste. [1994 sp.s. c 9 § 836; 1951 c 146 § 29.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.280 Determining market demand—No undue discrimination in proration of "allowable." The department 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 department 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. [1994 sp.s. c 9 § 837; 1951 c 146 § 30.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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 department 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 department 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. [1994 sp.s. c 9 § 838; 1951 c 146 § 31.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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. [1994 sp.s. c 9 § 839; 1951 c 146 § 32.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.310 Proration of allowable production in pool—Publication of orders—Emergency orders. Whenever the department 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 department 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 or her 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 department 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 department, an emergency requiring immediate action is found to exist, the department may 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 section 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. [1994 sp.s. c 9 § 840; 1951 c 146 § 33.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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. [1994 sp.s. c 9 § 841; 1951 c 146 § 34.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

[Title 78 RCW—page 56]

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 department. [1994 sp.s. c 9 § 842; 1951 c 146 § 35.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.335 Unit operation of pools. (1) The department 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 department may enter an order providing for the unit operations if it 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 department may also enter an order providing for unit operations, after notice and hearing, only if the department 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 department shall approve operations upon making a finding consistent with subsection (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 or her financial obligations in connection with the unit, such carrying and interest charges to be paid as provided by the department 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 department providing for unit operations may become effective until:

(a) The plan for unit operations approved by the department has been approved in writing by those persons who, under the department'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 department 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 department 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 department prescribes, the order will become unenforceable and shall be vacated by the department.

(7) An order providing for unit operations may be amended by an order made by the department 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 department, 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 department. 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 department 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 department 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 department 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. [1994 sp.s. c 9 § 843; 1983 c 253 § 23.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department 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 department. [1994 sp.s. c 9 § 844; 1983 c 253 § 26.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department under this chapter may 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. [1994 sp.s. c 9 § 845; 1951 c 146 § 49.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the department 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 department 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 department 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 department 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 department may stay or suspend in whole or in part the suspension order pending a hearing if so requested. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. [1994 sp.s. c 9 § 846; 1989 c 175 § 167; 1983 c 253 § 29.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1989 c 175: See note following RCW 34.05.010.

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 department, or fails to follow any other method prescribed by an order of the department 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 department believes that any oil, gas, or product is illegal, the department 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 department 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 department in defraying its expenses in the same manner as other funds provided by law for the use of the department. [1994 sp.s. c 9 § 847; 1983 c 253 § 30.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.470 Objections to order—Hearing required—Modification of order. Any person adversely affected by any order of the department 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 department accrues in any court to any person unless the person makes application for a hearing as provided in this section. 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 an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and shall be conducted in accordance with its provisions. [1994 sp.s. c 9 § 848; 1989 c 175 § 168; 1983 c 253 § 27; 1951 c 146 § 50.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1989 c 175: See note following RCW 34.05.010.

78.52.480 Appeal from order or decision—Rights of department. In proceedings for review of an order or decision of the department, the department 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. [1994 sp.s. c 9 § 849; 1983 c 253 § 28; 1951 c 146 § 51.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 commissioner of public lands who shall immediately notify all parties who appeared in the proceedings before the department 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 34.05.570. [1994 sp.s. c 9 § 850; 1983 c 253 § 32; 1951 c 146 § 52.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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 department under this chapter, 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 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 department may without bond obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1994 sp.s. c 9 § 851; 1951 c 146 § 56.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

78.52.540 Violations—Injunctions by private party. If the department fails to bring suit within thirty days to enjoin any apparent violation of this chapter, or of any rule, regulation, or order made by the department under this chapter, then any person or party in interest adversely affected by such violation, who has requested the department 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 department 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. [1994 sp.s. c 9 § 852; 1951 c 146 § 57.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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.]

Chapter 78.56

METALS MINING AND MILLING OPERATIONS

Sections

78.56.010	Intent.
78.56.020	Definitions.
78.56.030	Operations subject to this chapter and other requirements.
78.56.040	Disclosures required with state environmental policy act checklist—Public inspection of information.
78.56.050	Environmental impact statement required—Mitigation measures to be part of permit requirements—Department of ecology to cooperate with affected local governments.
78.56.060	Metals mining coordinator to be appointed—Duties.
78.56.070	Quarterly inspections by responsible state agencies required—Cross-training and coordination of inspections encouraged.
78.56.080	Metals mining account—Estimate of costs by department of ecology and department of natural resources—Fee on operations to be established by department of revenue—Contingent effective date.
78.56.090	Initial waste discharge permits for tailings facilities—Siting criteria—Primary screening process—Technical site investigation—Site selection report.
78.56.100	Waste discharge permits for metals mining and milling operations tailing facilities—Pollution control standards—Waste rock management plan—Citizen observation and verification of water samples—Voluntary reduction plan—Application of this section.
78.56.110	Performance security required—Conditions—Department of ecology authority to adopt requirements—Liability under performance security.
78.56.120	Remediation or mitigation by department of ecology—Order to submit performance security.
78.56.130	Legislative finding—Impact analysis required for large-scale operations—Impact fees by county legislative authority—Application of this section—Application of chapter 82.02 RCW.
78.56.140	Citizen action suits.
78.56.150	Application of requirements to milling facilities not adjacent to mining operation.
78.56.160	Moratorium on use of heap leach extraction process—Report to legislature by department of ecology and department of natural resources—Permanent prohibition of in situ extraction.
78.56.900	Severability—1994 c 232.
78.56.901	Effective date—1994 c 232 §§ 1-5, 9-17, and 23-29.
78.56.902	Effective date—1994 c 232 §§ 6-8 and 18-22.

78.56.010 Intent. It is in the best interests of the citizens of the state of Washington to insure the highest degree of environmental protection while allowing the proper development and use of its natural resources, including its mineral resources. Metals mining can have significant positive and adverse impacts on the state and on local communities. The purpose of this chapter is to assure that metals

mineral mining or milling operations are designed, constructed, and operated in a manner that promotes both economic opportunities and environmental and public health safeguards for the citizens of the state. It is the intent of the legislature to create a regulatory framework which yields, to the greatest extent possible, a metals mining industry that is compatible with these policies. [1994 c 232 § 1.]

78.56.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Metals mining and milling operation" means a mining operation extracting from the earth precious or base metal ore and processing the ore by treatment or concentration in a milling facility. It also refers to an expansion of an existing operation or any new metals mining operation if the expansion or new mining operation is likely to result in a significant, adverse environmental impact pursuant to the provisions of chapter 43.21C RCW. The extraction of dolomite, sand, gravel, aggregate, limestone, magnesite, silica rock, and zeolite or other nonmetallic minerals; and placer mining; and the smelting of aluminum are not metals mining and milling operations regulated under this chapter.

(2) "Milling" means the process of grinding or crushing ore and extracting the base or precious metal by chemical solution, electro winning, or flotation processes.

(3) "Heap leach extraction process" means the process of extracting base or precious metal ore by percolating solutions through ore in an open system and includes reprocessing of previously milled ore. The heap leach extraction process does not include leaching in a vat or tank.

(4) "In situ extraction" means the process of dissolving base or precious metals from their natural place in the geological setting and retrieving the solutions from which metals can be recovered.

(5) "Regulated substances" means any materials regulated under a waste discharge permit pursuant to the requirements of chapter 90.48 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

(6) "To mitigate" means: (a) To avoid the adverse impact altogether by not taking a certain action or parts of an action; (b) to minimize adverse impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps to avoid or reduce impacts; (c) to rectify adverse impacts by repairing, rehabilitating, or restoring the affected environment; (d) to reduce or eliminate adverse impacts over time by preservation and maintenance operations during the life of the action; (e) to compensate for the impact by replacing, enhancing, or providing substitute resources or environments; or (f) to monitor the adverse impact and take appropriate corrective measures. [1994 c 232 § 2.]

78.56.030 Operations subject to this chapter and other requirements. Metals mining and milling operations are subject to the requirements of this chapter in addition to the requirements established in other statutes and rules. [1994 c 232 § 3.]

78.56.040 Disclosures required with state environmental policy act checklist—Public inspection of information. The department of ecology shall require each applicant

submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ecology. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section. [1994 c 232 § 4.]

78.56.050 Environmental impact statement required—Mitigation measures to be part of permit requirements—Department of ecology to cooperate with affected local governments. (1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ecology shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ecology, after consultation with the department of fish and wildlife, shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the department of ecology's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ecology shall cooperate with all affected local governments to the fullest extent practicable. [1994 c 232 § 5.]

78.56.060 Metals mining coordinator to be appointed—Duties. The department of ecology will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer

active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities. [1994 c 232 § 6.]

78.56.070 Quarterly inspections by responsible state agencies required—Cross-training and coordination of inspections encouraged. (1) State agencies with the responsibility for inspecting metals mining and milling operations regulated under this chapter shall conduct such inspections at least quarterly: PROVIDED, That the inspections are not prevented by inclement weather conditions.

(2) The legislature encourages state agencies with inspection responsibilities for metals mining and milling operations regulated under this chapter to explore opportunities for cross-training of inspectors among state agencies and programs. This cross-training would be for the purpose of meeting the inspection responsibilities of these agencies in a more efficient and cost-effective manner. If doing so would be more efficient and cost-effective, state agency inspectors are also encouraged to coordinate inspections with federal and local government inspectors as well as with one another. [1994 c 232 § 7.]

78.56.080 Metals mining account—Estimate of costs by department of ecology and department of natural resources—Fee on operations to be established by department of revenue—Contingent effective date. (1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)(a) As part of its normal budget development process and in consultation with the metals mining industry, the department of ecology shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.

(3) Based on the cost estimates generated by the department of ecology and the department of natural resources, the department of revenue shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the agency responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same

criterion. The department of revenue may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet agencies' inspection responsibilities.

(4) The department of revenue shall collect the fees established in subsection (3) of this section. Chapter 82.32 RCW, insofar as applicable, applies to the fees imposed under this section. All moneys paid to the department of revenue from these fees shall be deposited into the metals mining account.

(5) This section shall take effect July 1, 1995, unless the legislature adopts an alternative approach based on the recommendations of the metals mining advisory group established in section 27, chapter 232, Laws of 1994. [1994 c 232 § 8.]

78.56.090 Initial waste discharge permits for tailings facilities—Siting criteria—Primary screening process—Technical site investigation—Site selection report. (1) In the processing of an application for an initial waste discharge permit for a tailings facility pursuant to the requirements of chapter 90.48 RCW, the department of ecology shall consider site-specific criteria in determining a preferred location of tailings facilities of metals mining and milling operations and incorporate the requirements of all known available and reasonable methods in order to maintain the highest possible standards to insure the purity of all waters of the state in accordance with the public policy identified by RCW 90.48.010.

In implementing the siting criteria, the department shall take into account the objectives of the proponent's application relating to mining and milling operations. These objectives shall consist of, but not be limited to (a) operational feasibility, (b) compatibility with optimum tailings placement methods, (c) adequate volume capacity, (d) availability of construction materials, and (e) an optimized embankment volume.

(2) To meet the mandate of subsection (1) of this section, siting of tailings facilities shall be accomplished through a two-stage process that consists of a primary alternatives screening phase, and a secondary technical site investigation phase.

(3) The primary screening phase will consist of, but not be limited to, siting criteria based on considerations as to location as follows:

(a) Proximity to the one hundred year flood plain, as indicated in the most recent federal emergency management agency maps;

(b) Proximity to surface and ground water;

(c) Topographic setting;

(d) Identifiable adverse geologic conditions, such as landslides and active faults; and

(e) Visibility impacts of the public generally and residents more particularly.

(4) The department of ecology, through the primary screening process, shall reduce the available tailings facility sites to one or more feasible locations whereupon a technical site investigation phase shall be conducted by the department for the purpose of verifying the adequacy of the remaining potential sites. The technical site investigations phase shall consist of, but not be limited to, the following:

- (a) Soil characteristics;
- (b) Hydrologic characteristics;
- (c) A local and structural geology evaluation, including seismic conditions and related geotechnical investigations;
- (d) A surface water control analysis; and
- (e) A slope stability analysis.

(5) Upon completion of the two phase evaluation process set forth in this section, the department of ecology shall issue a site selection report on the preferred location. This report shall address the above criteria as well as analyze the feasibility of reclamation and stabilization of the tailings facility. The siting report may recommend mitigation or engineering factors to address siting concerns. The report shall be developed in conjunction with the preparation of and contained in an environmental impact statement prepared pursuant to chapter 43.21C RCW. The report may be utilized by the department of ecology for the purpose of providing information related to the suitability of the site and for ruling on an application for a waste discharge permit.

(6) The department of ecology may, at its discretion, require the applicant to provide the information required in either phase one or phase two as described in subsections (3) and (4) of this section. [1994 c 232 § 9.]

78.56.100 Waste discharge permits for metals mining and milling operations tailing facilities—Pollution control standards—Waste rock management plan—Citizen observation and verification of water samples—Voluntary reduction plan—Application of this section.

(1) In order to receive a waste discharge permit from the department of ecology pursuant to the requirements of chapter 90.48 RCW or in order to operate a metals mining and milling tailing facility, an applicant proposing a metals mining and milling operation regulated under this chapter must meet the following additional requirements:

(a) Any tailings facility shall be designed and operated to prevent the release of pollution and must meet the following standards:

(i) Operators shall apply all known available and reasonable technology to limit the concentration of potentially toxic materials in the tailings facility to assure the protection of wildlife and human health;

(ii) The tailings facility shall have a containment system that includes an engineered liner system, leak detection and leak collection elements, and a seepage collection impoundment to assure that a leak of any regulated substance under chapter 90.48 RCW will be detected before escaping from the containment system. The design and management of the facility must ensure that any leaks from the tailings facility are detected in a manner which allows for remediation pursuant to chapter 90.48 RCW. The applicant shall prepare a detailed engineering report setting forth the facility design and construction. The applicant shall submit the report to the department of ecology for its review and approval of a design as determined by the department. Natural conditions, such as depth to ground water or net rainfall, shall be taken into account in the facility design, but not in lieu of the protection required by the engineered liner system;

(iii) The toxicity of mine or mill tailings and the potential for long-term release of regulated substances from mine or mill tailings shall be reduced to the greatest extent

practicable through stabilization, removal, or reuse of the substances; and

(iv) The closure of the tailings facility shall provide for isolation or containment of potentially toxic materials and shall be designed to prevent future release of regulated substances contained in the impoundment;

(b) The applicant must develop a waste rock management plan approved by the department of ecology and the department of natural resources which emphasizes pollution prevention. At a minimum, the plan must contain the following elements:

(i) An accurate identification of the acid generating properties of the waste rock;

(ii) A strategy for encapsulating potentially toxic material from the environment, when appropriate, in order to prevent the release of heavy metals and acidic drainage; and

(iii) A plan for reclaiming and closing waste rock sites which minimizes infiltration of precipitation and runoff into the waste rock and which is designed to prevent future releases of regulated substances contained within the waste rock;

(c) If an interested citizen or citizen group so requests of the department of ecology, the metals mining and milling operator or applicant shall work with the department of ecology and the interested party to make arrangements for citizen observation and verification in the taking of required water samples. While it is the intent of this subsection to provide for citizen observation and verification of water sampling activities, it is not the intent of this subsection to require additional water sampling and analysis on the part of the mining and milling operation or the department. The citizen observation and verification program shall be incorporated into the applicant's, operator's, or department's normal sampling regimen and shall occur at least once every six months. There is no duty of care on the part of the state or its employees to any person who participates in the citizen observation and verification of water sampling under chapter 232, Laws of 1994 and the state and its employees shall be immune from any civil lawsuit based on any injuries to or claims made by any person as a result of that person's participation in such observation and verification of water sampling activities. The metals mining and milling operator or applicant shall not be liable for any injuries to or claims made by any person which result from that person coming onto the property of the metals mining and milling operator or applicant as an observer pursuant to chapter 232, Laws of 1994. The results from these and all other relevant water sampling activities shall be kept on file with the relevant county and shall be available for public inspection during normal working hours; and

(d) An operator or applicant for a metals mining and milling operation must complete a voluntary reduction plan in accordance with RCW 70.95C.200.

(2) Only those tailings facilities constructed after April 1, 1994, must meet the requirement established in subsection (1)(a) of this section. Only those waste rock holdings constructed after April 1, 1994, must meet the requirement established in subsection (1)(b) of this section. [1994 c 232 § 10.]

78.56.110 Performance security required—Conditions—Department of ecology authority to adopt requirements—Liability under performance security. (1)

The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with

the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However, a single performance security, when acceptable to both the department of ecology and the department of natural resources, may be utilized by both agencies to satisfy the requirements of this section and RCW 78.44.087. [1995 c 223 § 1; 1994 c 232 § 11.]

78.56.120 Remediation or mitigation by department of ecology—Order to submit performance security. The department of ecology may, with staff, equipment, and material under its control, or by contract with others, remediate or mitigate any impact of a metals mining and milling operation when it finds that the operator or permit holder has failed to comply with relevant statutes, rules, or permits, and the operator or permit holder has failed to take adequate or timely action to rectify these impacts.

If the department intends to remediate or mitigate such impacts, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.56.110. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security to remediate or mitigate adverse impacts.

The department shall keep a record of all expenses incurred in carrying out any remediation or mitigation activities authorized under this section, including:

- (1) Remediation or mitigation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and
- (3) Administrative and legal expenses related to remediation or mitigation.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department of ecology, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1995 c 223 § 2; 1994 c 232 § 12.]

78.56.130 Legislative finding—Impact analysis required for large-scale operations—Impact fees by county legislative authority—Application of this section—Application of chapter 82.02 RCW. (1) The legislature finds that the construction and operation of large-scale metals mining and milling facilities may create new job opportunities and enhance local tax revenues. However, the legislature also finds that such operations may also result in

new demands on public facilities owned and operated by local government entities, such as public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. It is important for these economic impacts to be identified as part of any proposal for a large-scale metals mining and milling operation. It is then appropriate for the county legislative authority to balance expected revenues, including revenues derived from taxes paid by the owner of such an operation, and costs associated with the operation to determine to what degree any new costs require mitigation by the metals mining applicant.

(2) An applicant for a large-scale metals mining and milling operation regulated under this chapter must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local governmental units. For the purposes of this section, a metals mining operation is large-scale if, in the construction or operation of the mine and the associated milling facility, the applicant and contractors at the site employ more than thirty-five persons during any consecutive six-month period. The relevant county is the county in which the mine and mill are to be sited, unless the economic impacts to local governmental units are projected to substantially affect more than one county. In that case, the impact plan must be submitted to the legislative authority of all affected counties. Local governmental units include counties, cities, towns, school districts, and special purpose districts.

(3) The economic impact analysis shall include at least the following information:

- (a) A timetable for development of the mining operation, including the opening date of the operation and the estimated closing date;
- (b) The estimated number of persons coming into the impacted area as a result of the development of the mining operation;
- (c) An estimate of the increased capital and operating costs to local governmental units for providing services necessary as a result of the development of the mining operation; and
- (d) An estimate of the increased tax or other revenues accruing to local governmental units as a result of development of the mining and milling operation.

(4) The county legislative authority of a county planning under chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(5) The county legislative authority of a county which is not planning under chapter 36.70A RCW may negotiate with the applicant on a strategy to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(6) The county legislative authority must approve or disapprove the impact analysis and any associated proposals from the applicant to address economic impacts to local governmental units resulting from development of the mining

operation. If the applicant does not submit an adequate impact analysis to the relevant county legislative authority or if the county legislative authority does not find the applicant's proposals to be acceptable because of their failure to adequately mitigate adverse economic impacts, the county legislative authority shall refuse to issue any permits under its jurisdiction necessary for the construction or operation of the mine and associated mill.

(7) The requirements established in this section apply to metals mining operations under construction or constructed after April 1, 1994.

(8) The provisions of chapter 82.02 RCW shall apply to new mining and milling operations. [1994 c 232 § 13.]

78.56.140 Citizen action suits. (1) Except as provided in subsections (2) and (5) of this section, any aggrieved person may commence a civil action on his or her own behalf:

(a) Against any person, including any state agency or local government agency, who is alleged to be in violation of a law, rule, order, or permit pertaining to metals mining and milling operations regulated under chapter 232, Laws of 1994;

(b) Against a state agency if there is alleged a failure of the agency to perform any nondiscretionary act or duty under state laws pertaining to metals mining and milling operations; or

(c) Against any person who constructs a metals mining and milling operation without the permits and authorizations required by state law.

The superior courts shall have jurisdiction to enforce metals mining laws, rules, orders, and permit conditions, or to order the state to perform such act or duty, as the case may be. In addition to injunctive relief, a superior court may award a civil penalty when deemed appropriate in an amount not to exceed ten thousand dollars per violation per day, payable to the state of Washington.

(2) No action may be commenced:

(a) Under subsection (1)(a) of this section:

(i) Prior to sixty days after the plaintiff has given notice of the alleged violation to the state, and to any alleged violator of a metals mining and milling law, rule, order, or permit condition; or

(ii) If the state has commenced and is diligently prosecuting a civil action in a court of the state or of the United States or is diligently pursuing authorized administrative enforcement action to require compliance with the law, rule, order, or permit. To preclude a civil action, the enforcement action must contain specific, aggressive, and enforceable timelines for compliance and must provide for public notice of and reasonable opportunity for public comment on the enforcement action. In any such court action, any aggrieved person may intervene as a matter of right; or

(b) Under subsection (1)(b) of this section prior to sixty days after the plaintiff has given notice of such action to the state.

(3)(a) Any action respecting a violation of a law, rule, order, or permit condition pertaining to metals mining and milling operations may be brought in the judicial district in which such operation is located or proposed.

(b) In such action under this section, the state, if not a party, may intervene as a matter of right.

(4) The court, in issuing any final order in any action brought pursuant to subsection (1) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, wherever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

(5) A civil action to enforce compliance with a law, rule, order, or permit may not be brought under this section if any other statute, or the common law, provides authority for the plaintiff to bring a civil action and, in such action, obtain the same relief, as authorized under this section, for enforcement of such law, rule, order, or permit. Nothing in this section restricts any right which any person, or class of persons, may have under any statute or common law to seek any relief, including relief against the state or a state agency. [1994 c 232 § 14.]

78.56.150 Application of requirements to milling facilities not adjacent to mining operation. A milling facility which is not adjacent to or in the vicinity of the metals mining operation producing the ore to be milled and which processes precious or base metal ore by treatment or concentration is subject to the provisions of RCW 78.56.010 through 78.56.090, 78.56.100(1) (a), (c), and (d), 78.56.110 through 78.56.140, 70.94.620, and 70.105.300 and chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable laws. The smelting of aluminum does not constitute a metals milling operation under this section. [1994 c 232 § 15.]

78.56.160 Moratorium on use of heap leach extraction process—Report to legislature by department of ecology and department of natural resources—Permanent prohibition of in situ extraction. (1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources and the department of ecology shall jointly review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment and shall report their findings to the legislature by December 30, 1994.

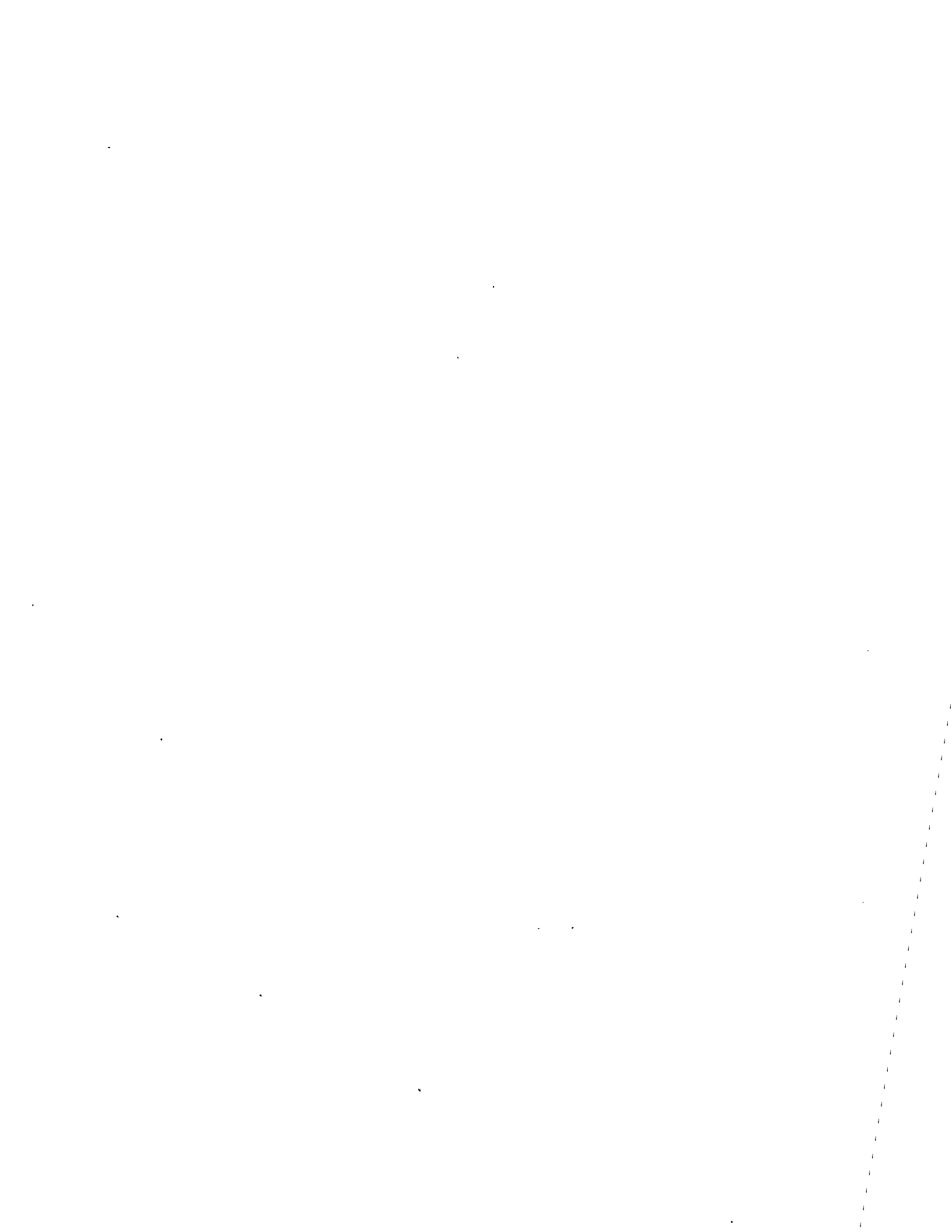
(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington. [1994 c 232 § 16.]

78.56.900 Severability—1994 c 232. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 232 § 29.]

78.56.901 Effective date—1994 c 232 §§ 1-5, 9-17, and 23-29. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and, with the exception of sections 6 through 8 and 18 through 22

of this act, shall take effect immediately [April 1, 1994].
[1994 c 232 § 30.]

78.56.902 Effective date—1994 c 232 §§ 6-8 and 18-22. Sections 6 through 8 and 18 through 22 of this act shall take effect July 1, 1995. [1994 c 232 § 31.]



Title 79

PUBLIC LANDS

Chapters

- 79.01 Public lands act.**
- 79.08 General provisions.**
- 79.12 Sales and leases of public lands and materials.**
- 79.14 Oil and gas leases on state lands.**
- 79.24 Capitol building lands.**
- 79.28 Lieu lands.**
- 79.36 Easements over public lands.**
- 79.38 Access roads.**
- 79.40 Trespass.**
- 79.44 Assessments and charges against state lands.**
- 79.60 Sustained yield cooperative agreements.**
- 79.64 Funds for managing and administering lands.**
- 79.66 Land bank.**
- 79.68 Multiple use concept in management and administration of state-owned lands.**
- 79.70 Natural area preserves.**
- 79.71 Washington natural resources conservation areas.**
- 79.72 Scenic river system.**
- 79.76 Geothermal resources.**
- 79.81 Marine plastic debris.**
- 79.90 Aquatic lands—In general.**
- 79.91 Aquatic lands—Easements and rights of way.**
- 79.92 Aquatic lands—Harbor areas.**
- 79.93 Aquatic lands—Waterways and streets.**
- 79.94 Aquatic lands—Tidelands and shorelands.**
- 79.95 Aquatic lands—Beds of navigable waters.**
- 79.96 Aquatic lands—Oysters, geoducks, shellfish, and other aquacultural uses.**

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.

Indians and Indian lands: Chapter 37.12 RCW.

Infractions: Chapter 7.84 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.

Reclamation districts may include public lands: RCW 89.30.016.

right of way across state land: RCW 89.30.223.

Restraint on disposition of certain areas bordering harbor lines: State Constitution Art. 15 § 1.

River, harbor improvements: Chapter 88.32 RCW.

Sale of other than state forest lands: RCW 76.01.010.

School and granted lands amount offered, platting: State Constitution Art. 16 § 4.

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 declaration of state ownership: State Constitution Art. 17 § 1.

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.

Washington coordinate system: Chapter 58.20 RCW.
 Waste: Chapter 64.12 RCW.
 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.

INDEX OF PUBLIC LAND ACTS OF SPECIAL OR HISTORICAL NATURE NOT CODIFIED IN RCW

<i>Subject</i>	<i>Year</i>	<i>Chapter</i>
Aberdeen	1901	141
Adams County	1915	78
	1941	211
American Lake	1907	191
	1907	197
Auburn game farm, transfer to parks and recreation commission	1981	49
Barthen, Lenore	1951	59
Behme, C.R.	1927	247
Bentley, W.C.	1921	38
Benton County, state patrol land	1961	59
	1977 ex.s.	191
Benton County, University of Washington land	1965 ex.s.	5
Benton County, WSU land	1961	76
Blaine	1917	144
Bremerton	1947	207
Camp Murray, conveyance for aerospace science and modeling center	1969 ex.s.	85
Canyon Lakes	1986	7
	1893	83 ¹
	1893	138
	1901	45
	1909 ex.s.	20
	1911	59 ²
	1913	50
	1915	191
	1917	167
	1925	27
1927	225	
1945	47	
Capitol Place	1937	160
Centralia	1949	38
Centralia, city of, easement for street	1963	81
Chehalis	1945	124
	1935	50
Chelan County	1935	52
	1935	53
	1949	35
Cheney	1949	35
Christenson, Ruby	1935	51
Clallam County	1931	92
	1941	94
	1945	207
Clallam County, county park purposes	1965 ex.s.	51
Clapp, Helen A.	1941	121
Clark County, state school for the deaf, conveyance of portion	1969 ex.s.	62
Clark County, Whipple Creek, exchange	1967	219
	1919	75
	1957	148

Columbia River	1905	28
	1915	145
	1937	86
Colville	1939	144
Commercial Trust Co.	1907	197
Conconnully Lake, lake in Okanogan County designated as	1965	104
	1915	157
Cowlitz County	1951	134
Cowlitz County, exchange of state forest lands for lands adjacent to Seaquest State Park	1971 ex.s.	158
Deno, Louis	1931	51
Deschutes Basin	1937	159
Deschutes Waterway	1939	76
Douglas County	1941	117
Drainage Ditches	1893	88
Eastern Washington College of Ed.	1949	35
	1959	128
Echo Glenn	1986	7
Everett, Port	1943	272
Fairmont Cemetery Association	1939	20
Ferry County, Curlew	1917	86
Feureur, Louis	1901	163
Fircrest	1986	7
Fort Worden, department of institutions land	1965 ex.s.	66
Franklin County	1931	100
Game department, tidelands in Clark County	1959	249
	1929	173
Game Farm	1955	281
Grays Harbor County	1913	27
	1957	40
Grays Harbor, Port	1935	50
	1935	52
Great Northern RR	1935	53
	1939	159
	1941	117
Harbor lines at Anacortes, Aberdeen, Hoquiam, Cosmopolis, Bellingham, Port Angeles, Renton, Lake Forest Park, Seattle, Tacoma, Olympia, Kalama, Bremerton, Port Orchard, Vancouver, Port Townsend, La Conner, Everett, relocation	1963	139
	1967 ex.s.	24
	1971 ex.s.	158
	1972 ex.s.	69
	1977 ex.s.	124
	1979	19
	1967 ex.s.	24
Harbor lines in Lake Union, Salmon Bay, Union Bay, Commencement Bay, relocation	1967 ex.s.	24
Hollingsworth, Howard C.	1949	23
Holman Waterway	1919	198
	1919	198
Ilwaco	1929	222
	1947	101
Ilwaco, Port	1957	85
Island County	1931	12
Jefferson County	1941	94
	1941	121
Keystone Water Users Ass'n	1915	78

King County	{	1933	77	Pierce County	{	1917	31
		1933	99			1929	173
		1935	49			1933	99
		1935	51			1949	37
		1939	8	Port of Seattle		1959	158
		1945	119	Port Orchard		1951	95
King County, University of				Port Townsend		1907	117
Washington land	1967 ex.s.		116	Pullman		1947	48
King County, unplatted tidelands deeded				Riverside State Park		1939	19
to state board for community				Rohrbach, F.L.		1939	19
college education; reversion	1971 ex.s.		241	Sager, Frank T.		1951	59
				San Juan Island National Historical			
Kitsap County	{	1927	262	Park		1967	94
		1931	86				
		1941	106	School Lands	{	1883	...
		1947	207			1890	...
Kitsap County, sewer disposal plant						1917	46
to county sewer district No. 5	1965 ex.s.		95			1923	61
Kitsap County, Washington						1939	129
Veterans' Home land to						1897	28
department of game	1965 ex.s.		94			1905	76
Kitsap County, transfer of land from						1907	3
state for recreational purposes	1975 1st ex.s.		27			1909	30
						1909	221
Klickitat County	{	1945	185			1913	59
		1951	73			1915	115
La Conner		1939	101	Seattle		1925 ex.s.	127
Lake Spokane, Long Lake						1927	267
redesignated as	1965		104			1929	177
Lake Washington		1911	94			1931	33
						1939	77
Land Commission	{	1889-90	...			1949	81
		1893	125			1957	81
Lewis County, department of natural						1957	252
resources, revesting Liberty						1981 1st ex.s.	1
Bay, relocation of harbor lines	1961		22	Skagit County		1951	83
				Skagit County port, conveyance of			
Mason County	{	1919	44	tidelands to		1969	127
		1935	104	Skagit County, sale or exchange of			
		1949	132	University of Washington land	1971 ex.s.		228
Mason County, Cemetery District				Skamania County		1937	91
No. 1, deeding of authorized	1971 ex.s.		90	Slininger, H.A.		1957	118
Mason County, exchange of forest						1909	126
trust land	1973		26	Snohomish County	{	1933	90
McCroskey, Milton P.		1947	26			1937	7
Medical Lake	1889-90		...	Snohomish County, reconveyance,			
Military department, lands in Seattle	1959		181	county park		1967	18
Montesano	1933 ex.s.		35	Soap Lake		1949	147
Mt. Spokane State Park		1947	237			1913	40
Mulinowski, A.M.		1955	281	Spokane	{	1937	85
Northern State Hospital at Sedro Woolley,						1955	374
disposition of property	1974 ex.s.		178			1921	98
Okanogan County		1939	159	Spokane County	{	1939	20
						1943	273
						1951	25
Olympia	{	1907	17	State Lands	{	1909	75
		1917	144			1909	216
		1947	65			1921	57
		1949	87			1935	56
		1949	96	State parks, Ike Kinswas State			
Olympia, Port		1953	92	Park—Recreation area		1971	50
Olympic National Park		1955	231	State parks, land in Douglas county		1959	72
Olympic National Park, exchange				State parks, land on Whidbey Island		1959	63
of standing timber for lands	1963		53	State parks, Mayfield Lake State			
Oregon-Wash. RR and Nav. Co.		1931	50	Park, name changed		1971	50
Pacific Highway		1929	215	State parks, Wallace Falls State Park		1965	146
Payne, J.H.		1935	49				
Peninsula, Port		1953	283				
People's Water & Gas Co.		1937	163				

State Timber	{ 1933	106
	{ 1941	135
	{ 1911	27
State Training School	{ 1931	94
Steilacoom	{ 1957	131
Strobach, Richard	{ 1929	201
Sunde, Olive	{ 1935	51
Sunnyside Chamber of Commerce	{ 1959	180
	{ 1907	16
Tacoma	{ 1907	123
Tacoma Scouts	{ 1935	104
Tidelands	{ 1897	27
	{ 1913	68
	{ 1919	51
United States	{ 1919	161
	{ 1931	86
	{ 1937	91
	{ 1945	79
	{ 1955	231
	{ 1891	125
	{ 1893	122
University of Washington	{ 1903	91
	{ 1907	3
	{ 1909	30
	{ 1911	94
University of Washington, R.H. Thomson expressway	{ 1967	116
University of Washington, sale or exchange of land in Skagit county	{ 1971 ex.s.	228
Unplatted Ballard tidelands deeded to state board for community college education; reversion	{ 1971 ex.s.	241
	{ 1901	88
Vancouver	{ 1909	95
	{ 1933 ex.s.	42
	{ 1937	163
Vancouver, Port	{ 1919	68
Varney-Sunnyside Packing Co.	{ 1955	130
	{ 1913	141
Walla Walla County	{ 1955	376
Walla Walla County, department of institutions land, conveyance of	{ 1965	115
	{ 1947	48
	{ 1949	23
	{ 1949	24
Washington State College	{ 1949	25
	{ 1949	207
	{ 1955	261
	{ 1959	59
	{ 1959	89
Washington State University, exchanges, leases	{ 1961	76
Washington State University, sale or exchange of land in Whitman county	{ 1971 ex.s.	228
	{ 1909	183
Washington Veterans' Home	{ 1945	79
	{ 1917	17
Wenatchee	{ 1947	43
	{ 1955	359
	{ 1931	50
Whitman County	{ 1947	26
Whitman County, sale or exchange of WSU land	{ 1971 ex.s.	228

	{ 1961	76
	{ 1963	78
Whitman County, WSU land	{ 1965	90
	{ 1967	116
	{ 1967 ex.s.	78
	{ 1969 ex.s.	28
Willapa Bay	{ 1927	231
	{ 1931	25
Willapa-Grays Harbor Highway	{ 1933	121
Willapa Harbor, Port	{ 1933	19
Woodinville	{ 1986	7
Yakima County	{ 1949	207
Yakima County, fairground	{ 1955	257

¹Section 1 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.

**Chapter 79.01
PUBLIC LANDS ACT**

Sections	
79.01.004	"Public lands," "state lands" defined.
79.01.006	Charitable, educational, penal, and reformatory real property—Inventory—Transfer.
79.01.007	Charitable, educational, penal, and reformatory real property—High economic return potential—Income.
79.01.009	Real property—Transfer or disposal without public auction.
79.01.036	"Improvements" defined.
79.01.038	"Valuable materials" defined.
79.01.048	Board of appraisers.
79.01.052	Board of natural resources—Records—Rules and regulations.
79.01.056	Commissioner of public lands—Deputy—Appointment—Powers—Oath.
79.01.060	Auditors and cashiers—Inspectors—Other assistants.
79.01.064	Official bonds.
79.01.068	Land inspectors—Compensation—Oaths.
79.01.072	False statements—Penalty.
79.01.074	Department authority to accept land.
79.01.076	Selection to complete uncompleted grants.
79.01.080	Relinquishment on failure or rejection of selection.
79.01.084	Appraisal, sale and lease of state lands—Blank forms of applications.
79.01.088	Who may purchase or lease—Application—Fees.
79.01.092	Inspection and appraisal—Minimum price of lands for educational purposes—Improvements on land.
79.01.093	Statutes not applicable to state tidelands, shorelands, harbor areas, and the beds of navigable waters.
79.01.094	Powers of department over lands granted to state for educational purposes.
79.01.095	Economic analysis of state lands held in trust—Scope—Use.
79.01.096	Maximum and minimum acreage subject to sale or lease—Exception—Approval by legislature or regents—Duration of leases—Alteration of leases.
79.01.100	Maximum area of urban or suburban state land—Platting.
79.01.104	Vacation of plat by commissioner—Vested rights.
79.01.108	Vacation on petition—Preference right to purchase.
79.01.112	Entire section may be inspected.
79.01.116	Date of sale limited by time of appraisal.
79.01.120	Survey to determine area subject to sale or lease.
79.01.124	Timber and valuable materials sold separately, when.
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.
79.01.132	Timber and valuable materials sold separately—Lump sum sales or scale sales—Time limit on removal—

- Reversion—Extensions, payment and interest—Direct sale to applicant without notice, when.
- 79.01.133 Timber and valuable materials sold separately—"Lump sum sale" and "scale sale" defined for purposes of RCW 79.01.132.
- 79.01.134 Contract for sale of rock, gravel, etc.—Forfeiture—Royalties—Monthly reports—Audit of books.
- 79.01.136 Separate appraisal of improvements before sale or lease—Damages and waste to be deducted—Appraisal by review board.
- 79.01.140 Possession after termination or expiration of lease—Extensions for crop rotation.
- 79.01.148 Deposit by purchaser to cover value of improvements.
- 79.01.152 Witnesses—Compelling attendance, examination, etc., in fixing values.
- 79.01.160 Rules and regulations for removal of timber sold.
- 79.01.164 Classification of land after timber removed—Lands for reforestation reserved.
- 79.01.168 Sale of valuable materials—Inspection, appraisal without application or deposit.
- 79.01.172 Disposition of crops on forfeited land.
- 79.01.176 Road material—Sale to public authorities—Disposition of proceeds.
- 79.01.184 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when.
- 79.01.188 Sale procedure—Pamphlet list of lands or materials—Notice of sale, proof of publishing and posting.
- 79.01.192 Sale procedure—Additional advertising expense.
- 79.01.196 Sale procedure—Place of sale—Hours—Reoffer—Continuance.
- 79.01.200 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction.
- 79.01.204 Sale procedure—Conduct of sales—Deposits—Memorandum of purchase—Bid bonds.
- 79.01.208 Sale procedure—Readvertisement of lands not sold.
- 79.01.212 Sale procedure—Confirmation of sale.
- 79.01.216 Sale procedure—Terms—Deferred payments, rate of interest.
- 79.01.220 Sale procedure—Certificate to governor of payment in full—Deed.
- 79.01.224 Sale procedure—Reservation in contract.
- 79.01.228 Sale procedure—Form of contract—Forfeiture—Extension of time.
- 79.01.232 Bill of sale for valuable materials sold separately.
- 79.01.236 Subdivision of contracts or leases—Fee.
- 79.01.240 Effect of mistake or fraud.
- 79.01.242 Lease of state lands—General.
- 79.01.244 Land leased for agriculture open to public for fishing and hunting—Exceptions.
- 79.01.248 Lease procedure—Scheduling auctions.
- 79.01.252 Lease procedure—Notice to be posted—Lease to highest bidder.
- 79.01.256 Lease procedure—Rental payment.
- 79.01.260 Lease procedure—Disposition of moneys.
- 79.01.264 Lease procedure—Rejection or approval of leases.
- 79.01.268 Lease procedure—Record of leases—Forfeiture—Time extension.
- 79.01.277 Lease procedure—Converting to a new lease.
- 79.01.284 Water right for irrigation as improvement.
- 79.01.292 Assignment of contracts or leases.
- 79.01.295 Grazing lands—Fish and wildlife goals—Technical advisory committee—Implementation.
- 79.01.2951 Findings—Salmon stocks—Grazing lands—Coordinated resource management plans.
- 79.01.2955 Purpose—Ecosystem standards.
- 79.01.296 Grazing leases—Restrictions—Agricultural leases in lieu of.
- 79.01.300 Leased lands reserved from sale—Exception.
- 79.01.301 Sale of lands used for grazing or other low priority purposes which have irrigated agricultural potential—Applications—Regulations.
- 79.01.304 Abstracts of state lands.
- 79.01.308 Applications for federal certification that lands are nonmineral.
- 79.01.312 Certain state lands subject to easements for removal of valuable materials.
- 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.
- 79.01.320 Certain state lands subject to easements for removal of valuable materials—Reasonable facilities and service for transportation must be furnished.
- 79.01.324 Certain state lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.
- 79.01.328 Certain state lands subject to easements for removal of valuable materials—Penalty for violation of orders—Reversion of easement.
- 79.01.332 Certain state lands subject to easements for removal of valuable materials—Application for right of way—Appraisal of damage—Certificate, contents.
- 79.01.336 Certain state lands subject to easements for removal of valuable materials—Forfeiture for nonuser.
- 79.01.340 Right of way for roads and streets over, or for county wharves upon, state lands.
- 79.01.344 Railroad right of way.
- 79.01.348 Railroad right of way—Procedure to acquire.
- 79.01.352 Railroad right of way—Appraisal.
- 79.01.356 Railroad right of way—Improvements—Appraisal, deposit, etc.
- 79.01.360 Railroad right of way—Release or payment of damages as to improvements outside right of way.
- 79.01.364 Railroad right of way—Certificate.
- 79.01.384 Right of way for utility pipe lines, transmission lines, etc.
- 79.01.388 Right of way for utility pipe lines, transmission lines, etc.—Procedure to acquire.
- 79.01.392 Right of way for utility pipe lines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser.
- 79.01.396 Right of way for irrigation, diking and drainage purposes.
- 79.01.400 Right of way for irrigation, diking and drainage purposes—Procedure to acquire.
- 79.01.404 Right of way for irrigation, diking and drainage purposes—Appraisal—Certificate.
- 79.01.408 Grant of overflow rights.
- 79.01.412 Construction of foregoing sections relating to rights of way and overflow rights.
- 79.01.414 Grant of such easements and rights as applicant may acquire in private lands by eminent domain.
- 79.01.416 Condemnation proceedings where state land is involved.
- 79.01.500 Court review of actions.
- 79.01.612 Management of acquired lands—Land acquired by escheat suitable for park purposes—Rental—Repairs.
- 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.
- 79.01.617 Prospecting and mining—Public auction of mining contracts.
- 79.01.618 Prospecting and mining—Mineral leases, contracts, and permits—Rules.
- 79.01.620 Prospecting and mining—Leases for mineral prospecting—Application—Fees—Rejection.
- 79.01.624 Prospecting and mining—Compliance with mineral rights reservations—Compensation for loss or damage to surface rights.
- 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.
- 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.
- 79.01.633 Prospecting and mining—Lessee's rights and duties relative to owner of surface rights.
- 79.01.634 Prospecting and mining—Termination of lease or contract for default.
- 79.01.640 Prospecting and mining—Form, terms, and conditions of prospecting leases and mining contracts—Subcontracts.
- 79.01.642 Prospecting and mining—Reclamation of premises.
- 79.01.644 Prospecting and mining—Mining contracts—Production royalties—Minimum royalty.

- 79.01.645 Prospecting and mining—Renewal of mining contracts.
- 79.01.648 Prospecting and mining—Consolidation of mining contracts.
- 79.01.649 Prospecting and mining—State may enter lands and examine property and records—Disclosure of information.
- 79.01.650 Prospecting and mining—State may dispose of materials not covered by prospecting lease or mining contract—Disposition of timber.
- 79.01.651 Prospecting and mining—Recreational mineral prospecting permits.
- 79.01.652 Coal mining—Leases and option contracts authorized.
- 79.01.656 Coal mining—Application for option contract—Fee.
- 79.01.660 Coal mining—Investigation—Grant of option contract—Rights and duties of option contract holder.
- 79.01.664 Coal mining—Action to determine damage to surface owner or lessee—Commencement of option contract delayed.
- 79.01.668 Coal mining—Lease—Application, terms, royalties.
- 79.01.672 Coal mining—Lease without option contract.
- 79.01.676 Coal mining—Inspection of works and records—Information confidential.
- 79.01.680 Coal mining—Use and sale of materials from land.
- 79.01.684 Coal mining—Suspension of mining—Termination of lease.
- 79.01.688 Coal mining—Condition of premises on termination of lease—Removal of personalty.
- 79.01.692 Coal mining—Re-lease—Procedure—Preference to lessee.
- 79.01.696 Coal mining—Waste prohibited.
- 79.01.700 Oil and gas leases on state lands.
- 79.01.704 Witnesses—Compelling attendance, production of books, etc.
- 79.01.708 Maps and plats—Record and index—Public inspection.
- 79.01.712 Seal.
- 79.01.720 Fees.
- 79.01.724 Fee book—Verification.
- 79.01.728 Assessments paid to be added to purchase price of land.
- 79.01.732 Appearance before United States land offices.
- 79.01.736 Duty of attorney general—Commissioner may represent state.
- 79.01.740 Reconsideration of official acts.
- 79.01.744 Reports.
- 79.01.748 Trespasser guilty of larceny, when.
- 79.01.752 Lessee or contract holder guilty of misdemeanor, when.
- 79.01.756 Removal of timber, manufacture into articles—Trespass damages.
- 79.01.760 Trespass, waste, damages—Prosecutions.
- 79.01.765 Rewards for information regarding violations.
- 79.01.770 School districts, institutions of higher education, purchase of leased lands with improvements by—Authorized—Exception—Price.
- 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.
- 79.01.778 School districts, institutions of higher education, purchase of leased lands with improvements by—Extension of contract period, when—Limitation.
- 79.01.780 Determination if lands purchased or leased by school districts or institutions of higher education are used as school sites—Reversion, when.
- 79.01.784 Urban lands—Cooperative planning, development.
- 79.01.790 Findings—Damage to timber.
- 79.01.795 Sale of damaged timber.
- 79.01.800 Seaweed—Marine aquatic plants defined.
- 79.01.805 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restrictions.
- 79.01.810 Seaweed—Harvest and possession violations—Penalties and damages.
- 79.01.815 Seaweed—Enforcement.

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" defined.

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.]

79.01.006 Charitable, educational, penal, and reformatory real property—Inventory—Transfer.

(1) Every five years the department of social and health services and other state agencies that operate institutions shall conduct an inventory of all real property subject to the charitable, educational, penal, and reformatory institution account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled. The inventory shall identify which of those real properties are not needed for state-provided residential care, custody, or treatment. By December 1, 1992, and every five years thereafter the department shall report the results of the inventory to the house of representatives committee on capital facilities and financing, the senate committee on ways and means, and the joint legislative audit and review committee.

(2) Real property identified as not needed for state-provided residential care, custody, or treatment shall be transferred to the corpus of the charitable, educational, penal, and reformatory institution account. This subsection shall not apply to leases of real property to a consortium of three or more counties in order for the counties to construct or otherwise acquire correctional facilities for juveniles or adults or to real property subject to binding conditions that conflict with the other provisions of this subsection.

(3) The department of natural resources shall manage all property subject to the charitable, educational, penal, and reformatory institution account and, in consultation with the department of social and health services and other affected agencies, shall adopt a plan for the management of real

property subject to the account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled.

(a) The plan shall be consistent with state trust land policies and shall be compatible with the needs of institutions adjacent to real property subject to the plan.

(b) The plan may be modified as necessary to ensure the quality of future management and to address the acquisition of additional real property. [1996 c 288 § 51; 1996 c 261 § 1; 1991 c 204 § 1.]

Reviser's note: This section was amended by 1996 c 261 § 1 and by 1996 c 288 § 51, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Department of social and health services duty: RCW 43.20A.035.

79.01.007 Charitable, educational, penal, and reformatory real property—High economic return potential—Income. Where C.E.P. & R.I. land has the potential for lease for commercial, industrial, or residential uses or other uses with the potential for high economic return and is within urban or suburban areas, the department of natural resources shall make every effort consistent with trust land management principles and all other provisions of law to lease the lands for such purposes, unless the land is subject to a lease to a state agency operating an existing state institution. The department of natural resources is authorized, subject to approval by the board of natural resources and only if a higher return can be realized, to exchange such lands for lands of at least equal value and to sell such lands and use the proceeds to acquire replacement lands. The department shall report to the appropriate legislative committees all C.E.P. & R.I. land purchased, sold, or exchanged. Income from the leases shall be deposited in the charitable, educational, penal, and reformatory institutions account. The legislature shall give priority consideration to appropriating one-half of the money derived from lease income to providing community housing for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. [1991 c 204 § 5.]

79.01.009 Real property—Transfer or disposal without public auction. (1) For the purposes of this section, "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(2) With the approval of the board of natural resources, the department of natural resources may directly transfer or dispose of real property, without public auction, in the following circumstances:

- (a) Transfers in lieu of condemnations;
- (b) Transfers to public agencies; and
- (c) Transfers to resolve trespass and property ownership disputes.

(3) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such

(1996 Ed.)

transaction is in the best interest of the state or affected trust. [1992 c 167 § 2.]

79.01.036 "Improvements" defined. 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" defined. "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.

79.01.048 Board of appraisers. The board of natural resources 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. [1988 c 128 § 50; 1927 c 255 § 12; RRS § 7797-12. Formerly RCW 43.65.030.]

79.01.052 Board of natural resources—Records—Rules and regulations. The board of natural resources shall 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. [1988 c 128 § 51; 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 natural resources, 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." [1988 c 128 § 52; 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 natural resources, 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 natural resources, to report all facts within their knowledge to the proper prosecuting officer to the end that prosecution for the offense may be had. [1988 c 128 § 53; 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 department over lands granted to state for educational purposes. The department of natural resources 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 department to prepare all reports, data and information in its records pertaining to any such proposed sale or lease. The department 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 department 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 department shall determine whether or not, and the terms upon which, the proposed sale or lease shall be consummated. [1988 c 128 § 54; 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 appraisal 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—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. 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, and in the case of those sales appraised below the amount specified in RCW 79.01.200, the department of natural resources may require full cash payment on the day of 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 valuable materials 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. [1989 c 148 § 1; 1988 c 136 § 2; 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.]

79.01.136 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 natural resources, 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. [1988 c 128 § 55; 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 not less than two times during a four week period prior to the time of sale in at least one newspaper 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 region 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 region headquarters and the department's Olympia office: **PROVIDED,** That any sale of valuable materials 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. [1989 c 148 § 2; 1988 c 136 § 3; 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. 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 one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to property to be sold. This section does not apply to direct sales authorized in RCW 79.01.184. [1989 c 148 § 3; 1988 c 136 § 1; 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 improve-

ments 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.

79.01.295 Grazing lands—Fish and wildlife goals—Technical advisory committee—Implementation. (1) By December 31, 1993, the *department of wildlife and the *department of fisheries shall each develop goals for the wildlife and fish that these agencies respectively manage, to preserve, protect, and perpetuate wildlife and fish on shrub steppe habitat or on lands that are presently agricultural lands, rangelands, or grazable woodlands. These goals shall be consistent with the maintenance of a healthy ecosystem.

(2) By July 31, 1993, the conservation commission shall appoint a technical advisory committee to develop standards that achieve the goals developed in subsection (1) of this section. The committee members shall include but not be limited to technical experts representing the following interests: Agriculture, academia, range management, utilities, environmental groups, commercial and recreational fishing interests, the Washington rangelands committee, Indian tribes, the *department of wildlife, the *department of fisheries, the department of natural resources, the department of ecology, conservation districts, and the department of agriculture. A member of the conservation commission shall chair the committee.

(3) By December 31, 1994, the committee shall develop standards to meet the goals developed under subsection (1) of this section. These standards shall not conflict with the recovery of wildlife or fish species that are listed or proposed for listing under the federal endangered species act. These standards shall be utilized to the extent possible in development of coordinated resource management plans to provide a level of management that sustains and perpetuates renewable resources, including fish and wildlife, riparian areas, soil, water, timber, and forage for livestock and wildlife. Furthermore, the standards are recommended for application to model watersheds designated by the Northwest power planning council in conjunction with the conservation commission. The maintenance and restoration of sufficient habitat to preserve, protect, and perpetuate wildlife and fish shall be a major component included in the standards and coordinated resource management plans. Application of standards to privately owned lands is voluntary and may be dependent on funds to provide technical assistance through conservation districts.

(4) The conservation commission shall approve the standards and shall provide them to the departments of natural resources and *wildlife, each of the conservation districts, Washington State University cooperative extension service, and the appropriate committees of the legislature. The conservation districts shall make these standards available to the public and for coordinated resource management planning. Application to private lands is voluntary.

(5) The department of natural resources shall implement practices necessary to meet the standards developed pursuant to this section on department managed agricultural and grazing lands, consistent with the trust mandate of the Washington state Constitution and Title 79 RCW. The standards may be modified on a site-specific basis as needed to achieve the fish and wildlife goals, and as determined by the *department of fisheries or wildlife, and the department of natural resources. Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve

the standards that meet those developed pursuant to this section. [1993 sp.s. c 4 § 5.]

***Reviser's note:** Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.01.2951.

79.01.2951 Findings—Salmon stocks—Grazing lands—Coordinated resource management plans. The legislature finds that many wild stocks of salmonids in the state of Washington are in a state of decline. Stocks of salmon on the Columbia and Snake rivers have been listed under the federal endangered species act, and the bull trout has been petitioned for listing. Some scientists believe that numerous other stocks of salmonids in the Pacific Northwest are in decline or possibly extinct. The legislature declares that to lose wild stocks is detrimental to the genetic diversity of the fisheries resource and the economy, and will represent the loss of a vital component of Washington's aquatic ecosystems. The legislature further finds that there is a continuing loss of habitat for fish and wildlife. The legislature declares that steps must be taken in the areas of wildlife and fish habitat management, water conservation, wild salmonid stock protection, and education to prevent further losses of Washington's fish and wildlife heritage from a number of causes including urban and rural subdivisions, shopping centers, industrial park, and other land use activities.

The legislature finds that the maintenance and restoration of Washington's rangelands and shrub-steppe vegetation is vital to the long-term benefit of the people of the state. The legislature finds that approximately one-fourth of the state is open range or open-canopied grazable woodland. The legislature finds that these lands provide forage for livestock, habitat for wildlife, and innumerable recreational opportunities including hunting, hiking, and fishing.

The legislature finds that the development of coordinated resource management plans, that take into consideration the needs of wildlife, fish, livestock, timber production, water quality protection, and rangeland conservation on all state-owned grazing lands will improve the stewardship of these lands and allow for the increased development and maintenance of fish and wildlife habitat and other multipurpose benefits the public derives from these lands.

The legislature finds that the state currently provides insufficient technical support for coordinated resource management plans to be developed for all state-owned lands and for many of the private lands desiring to develop such plans. As a consequence of this lack of technical assistance, our state grazing lands, including fish and wildlife habitat and other resources provided by these lands, are not achieving their potential. The legislature also finds that with many state lands being intermixed with private grazing lands, development of coordinated resource management plans on state-owned and managed lands provides an opportunity to improve the management and enhance the conditions of adjacent private lands.

A purpose of chapter 4, Laws of 1993 sp. sess. is to establish state grazing lands as the model in the state for the development and implementation of standards that can be used in coordinated resource management plans and to thereby assist the timely development of coordinated

resource management plans for all state-owned grazing lands. Every lessee of state lands who wishes to participate in the development and implementation of a coordinated resource management plan shall have the opportunity to do so. [1996 c 163 § 2. Prior: 1993 sp.s. c 4 § 1.]

79.01.2955 Purpose—Ecosystem standards. (1) It is the purpose of chapter 163, Laws of 1996 that all state agricultural lands, grazing lands, and grazeable woodlands shall be managed in keeping with the statutory and constitutional mandates under which each agency operates. Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.

(2) The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason, land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they shall be applied through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department of natural resources shall allow multiple use on lands owned or managed by the department of natural resources where multiple use can be demonstrated to be compatible with RCW 79.68.010, 79.68.020, and 79.68.050.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of

using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests. [1996 c 163 § 1.]

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 appraisal 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 nonuser. 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 appraisalment 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 appraisalment, 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 appraisalment 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 appraisalment, 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 natural resources, 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 seek appellate review as in other civil cases. Unless appellate review of the judgment of the superior court is sought, 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. [1988 c 202 § 59; 1988 c 128 § 56; 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.]

Reviser's note: This section was amended by 1988 c 128 § 56 and by 1988 c 202 § 59, 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—1988 c 202: See note following RCW 2.24.050.

79.01.612 Management of acquired lands—Land acquired by escheat suitable for park purposes—Rental—Repairs. (1) Except as provided in subsection (2) of this section, 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 either at public auction or direct sale to public agencies 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, except 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.

(2) When land is acquired by the state by escheat which because of its location or features may be suitable for park purposes, the department shall notify the state parks and recreation commission. The department and the commission shall jointly evaluate the land for its suitability for park purposes, based upon the features of the land and the need for park facilities in the vicinity. Where the department and commission determine that such land is suitable for park purposes, it shall be offered for transfer to the commission, or, in the event that the commission declines to accept the land, to the local jurisdiction providing park facilities in that area. When so offered, the payment required by the recipient agency shall not exceed the costs incurred by the department in managing and protecting the land since receipt by the state.

(3) The department may review lands acquired by escheat since January 1, 1983, for their suitability for park purposes, and apply the evaluation and transfer procedures authorized by subsection (2) of this section. [1993 c 49 § 1; 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 34.05 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.

The 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 who fails to obey the same, without legal excuse, shall be considered in contempt. The board, or commissioner, shall certify the facts thereof to the superior court of the county in which such witness may reside for contempt of court proceedings as provided in chapter 7.21 RCW. The certificate of the board, or commissioner, shall be considered by the court as prima facie evidence of the contempt. [1989 c 373 § 26; 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—1989 c 373: See RCW 7.21.900.

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

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 department of natural resources, 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. [1988 c 128 § 57; 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 department of natural resources, 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." [1988 c 128 § 58; 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.

(1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW 79.01.038 from public lands, or causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department of natural resources determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs, including but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 4.24.630, 79.01.756, or 79.40.070.

(3) The department of natural resources 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. [1994 c 280 § 2; 1993 c 266 § 1; 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.

79.01.765 Rewards for information regarding violations. The department of natural resources is authorized to offer and pay a reward not to exceed ten thousand dollars in each case for information regarding violations of any statute or rule relating to the state's public lands and natural resources on those lands, except forest practices under chapter 76.09 RCW. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department of natural resources is authorized to adopt rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. The department is also authorized to adopt rules establishing the criteria for paying a reward

and the amount to be paid. No appropriation shall be required for disbursement. [1994 c 56 § 1; 1990 c 163 § 8.]

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.335.090.

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 RCW 28A.525.010 through 28A.525.222 and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.515.320 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. [1990 c 33 § 596; 1971 ex.s. c 200 § 3.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

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.]

79.01.800 Seaweed—Marine aquatic plants defined. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 § 2.]

Findings—1993 c 283: "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

License: RCW 75.25.005.

79.01.805 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction. (1) The maximum daily wet weight harvest or possession of seaweed for personal use from all aquatic lands as defined under RCW 79.90.010 and all privately owned tidelands is ten pounds per person. The department of natural resources in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from aquatic lands as defined under RCW 79.90.010, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3.]

Effective date—1994 c 286: "This act shall take effect July 1, 1994." [1994 c 286 § 6.]

Findings—1993 c 283: See note following RCW 79.01.800.

79.01.810 Seaweed—Harvest and possession violations—Penalties and damages. It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.01.805. A violation of this section is a misdemeanor punishable in accordance with RCW 9.92.030, and a violation taking place on aquatic lands is subject to the provisions of RCW 79.01.760. A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on private tidelands and

committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [1994 c 286 § 2; 1993 c 283 § 4.]

Effective date—1994 c 286: See note following RCW 79.01.805.

Findings—1993 c 283: See note following RCW 79.01.800.

79.01.815 Seaweed—Enforcement. The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.01.805 and 79.01.810. [1994 c 286 § 3; 1993 c 283 § 5.]

Effective date—1994 c 286: See note following RCW 79.01.805.

Findings—1993 c 283: See note following RCW 79.01.800.

Chapter 79.08

GENERAL PROVISIONS

Sections

- 79.08.015 Exchange of land under control of department of natural resources—Public notice—News release—Hearing—Procedure.
- 79.08.070 University demonstration forest and experiment station.
- 79.08.080 Grant of lands for city park or playground purposes.
- 79.08.090 Exchange of lands to secure city parks and playgrounds.
- 79.08.100 Director of ecology to assist city parks.
- 79.08.102 Use of public lands for state or city park purposes—Regents' consent, when.
- 79.08.104 Use of public lands for state or city park purposes—Rental—Deposit of rent.
- 79.08.106 Use of public lands for state or city park purposes—Removal of timber—Consent—Compensation.
- 79.08.1062 State lands used for state parks—Trust lands, payment of full market value rental—Other lands, rent free.
- 79.08.1064 State lands used for state parks—Trust lands—Determination of full market value by board of natural resources.
- 79.08.1066 State lands used for state parks—Trust lands—Full market value rental defined—Factor in determination.
- 79.08.1069 State lands used for state parks—Certain funds appropriated for rental to be deposited without deduction for management purposes.
- 79.08.1072 Utilization of public lands for outdoor recreational and other beneficial public uses—State agency cooperation.
- 79.08.1074 Department estopped from certain actions respecting state parks without concurrence of commission.
- 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.
- 79.08.108 Exchange of lands to secure state park lands.
- 79.08.109 Exchange of lands to secure private lands for parks and recreation purposes.
- 79.08.110 Relinquishment to United States, in certain cases of reserved mineral rights.
- 79.08.120 Leases to United States for national defense.
- 79.08.140 Prospecting leases and contracts on state lands.
- 79.08.150 Option contracts and coal leases on state lands.
- 79.08.160 Oil and gas leases on state lands.
- 79.08.170 Transfer of county auditor's duties to county treasurer.
- 79.08.180 Exchange of state lands—Additional purposes—Conditions.
- 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.

- 79.08.200 Exchange of lands to facilitate marketing of forest products or to consolidate and block up state lands—Agreements, deeds, etc.
- 79.08.210 Transfer of state forest lands back to counties for park use—Procedure—Timber resource management.
- 79.08.250 Exchange of lands—Purposes.
- 79.08.275 Milwaukee Road corridor—Management and control.
- 79.08.277 Milwaukee Road corridor—Recreational use—Permit—Rules—Fees.
- 79.08.279 Powers with respect to Milwaukee Road corridor.
- 79.08.281 Milwaukee Road corridor—Leasing—Duties with respect to unleased portions.
- 79.08.283 Milwaukee Road corridor—Authority to terminate or modify leases—Notice.
- 79.08.284 Milwaukee Road corridor—Cross-state trail—Land transfers—Rail carrier franchise.

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 ecology, 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. [1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1.]

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 ecology to assist city parks. The director of ecology, 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. [1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3.]

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 department of natural resources 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 department 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. [1988 c 128 § 59; 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

department of natural resources and without payment to the particular fund for which the lands are held in trust, the reasonable value thereof as fixed by the department. [1988 c 128 § 60; 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, trade, and economic development. [1995 c 399 § 209; 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.

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 board of natural resources shall 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 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 effect such exchanges. When such exchanges have been effected, the lands so acquired in exchange shall be reserved by the department for state park purposes in accordance with RCW 79.08.102, 79.08.104 and 79.08.106. [1988 c 128 § 61; 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 each county with a population of two hundred ten thousand or more, 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. [1991 c 363 § 152; 1983 c 3 § 201; 1955 c 184 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

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 Milwaukee Road corridor—Management and control. (Contingent expiration date.) Except as provided in RCW 43.51.1121 and 43.51.113, the portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department of natural resources. [1996 c 129 § 8; 1989 c 129 § 2; 1984 c 174 § 6.]

Contingent expiration date—1996 c 129 §§ 7, 8: See note following RCW 43.51.405.

Intent—Effective date—Severability—1996 c 129: See notes following RCW 43.51.112.

Construction—1989 c 129: See note following RCW 43.51.405.

Purpose—1984 c 174: See note following RCW 43.51.405.

79.08.275 Milwaukee Road corridor—Management and control. (*Contingent effective date.*) The portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department of natural resources. [1989 c 129 § 2; 1984 c 174 § 6.]

Construction—1989 c 129: See note following RCW 43.51.405.

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 Milwaukee Road corridor—Leasing—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 Milwaukee Road corridor—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.

79.08.284 Milwaukee Road corridor—Cross-state trail—Land transfers—Rail carrier franchise. See RCW 43.51.112 through 43.51.114.

Chapter 79.12

SALES AND LEASES OF PUBLIC LANDS AND MATERIALS

Sections

79.12.015	Amateur radio repeater stations—Legislative intent.
79.12.025	Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies.
79.12.035	Retirement of interfund loans—Transfer of timber cutting rights on forest board purchase lands to the federal land grant trusts—Distribution of revenue from timber management activities.
79.12.055	Nonprofit television reception improvements districts—Rental of public lands—Intent.
79.12.095	Geothermal resources—Guidelines for development.
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.

79.12.015 Amateur radio repeater stations—Legislative intent. The department of natural resources

leases state lands and space on towers located on state lands to amateur radio operators for their repeater stations. These sites are necessary to maintain emergency communications for public safety and for use in disaster relief and search and rescue support.

The licensed amateur radio operators of the state provide thousands of hours of public communications service to the state every year. Their communication network spans the entire state, based in individual residences and linked across the state through a series of mountain-top repeater stations. The amateur radio operators install and maintain their radios and the electronic repeater stations at their own expense. The amateur radio operators who use their equipment to perform public services should not bear the sole responsibility for supporting the electronic repeater stations.

In recognition of the essential role performed by the amateur radio operators in emergency communications, the legislature intends to reduce the rental fee paid by the amateur radio operators while assuring the department of natural resources full market rental for the use of state-owned property. [1988 c 209 § 1.]

79.12.025 Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies. The department of natural resources shall determine the lease rate for amateur radio electronic repeater sites and units available for public service communication. For the amateur operator to qualify for a rent of one hundred dollars per year per site, the amateur operator shall do one of the following: (1) Register and remain in good standing with the state's radio amateur civil emergency services and amateur radio emergency services organizations, or (2) if an amateur group, sign a statement of public service developed by the department.

The legislature's biennial appropriations shall account for the estimated difference between the one hundred dollar per year, per site, per lessee paid by the qualified amateur operators and the fair market amateur rent, as established by the department.

The amateur radio regulatory authority approved by the federal communication commission shall assign the radio frequencies used by amateur radio lessees. The department shall develop guidelines to determine which lessees are to receive reduced rental fees as moneys are available by legislative appropriation to pay a portion of the rent for electronic repeaters operated by amateur radio operators. [1995 c 105 § 1; 1988 c 209 § 2.]

79.12.035 Retirement of interfund loans—Transfer of timber cutting rights on forest board purchase lands to the federal land grant trusts—Distribution of revenue from timber management activities. (1) The department of natural resources is authorized to:

(a) Determine the total present account balance with interest of the interfund loans made by the resource management cost account to the forest development account in accordance with generally accepted accounting principles;

(b) Subject to approval of the board of natural resources, effectuate a transfer of timber cutting rights on forest board purchase lands to the federal land grant trusts in such proportion that each trust receives full and fair market value for the interfund loans and is fully repaid or so much thereof

as possible within distribution constraints described in subsection (2) of this section.

(2) After the effective date of the transfer authorized by subsection (1)(b) of this section and until the exercise of the cutting rights on the timber transferred has been fully satisfied, the distribution of revenue from timber management activities on forest board purchase lands on which cutting rights have been transferred shall be as follows:

(a) As determined by the board of natural resources, an amount no greater than thirty-three and three-tenths percent to be distributed to the federal land grant trust accounts and resource management cost account as directed by RCW 79.64.040 and 79.64.050;

(b) As determined by the board of natural resources, an amount not less than sixteen and seven-tenths percent to the forest development account;

(c) Fifty percent to be distributed as provided in RCW 76.12.120(2). [1988 c 70 § 3.]

Purpose—1988 c 70 § 3: "The purpose of RCW 79.12.035 is to provide a means to retire interfund loans authorized by RCW 79.64.030 from the resource management cost account to the forest development account. The resource management cost account is an asset of the federal land grant trusts. Section 3 of this act is intended to authorize a process by which the interfund loans may be repaid such that the federal land grant trusts will receive full fair market value without disruption in income to counties and the state general fund from management activities on state forest lands managed pursuant to chapter 79.12 RCW." [1988 c 70 § 2.]

79.12.055 Nonprofit television reception improvements districts—Rental of public lands—Intent. The department of natural resources shall determine the fair market rental rate for leases to nonprofit television reception improvement districts. It is the intent of the legislature to appropriate general funds to pay a portion of the rent charged to nonprofit television reception improvement districts. It is the further intent of the legislature that such a lessee pay an annual lease rent of fifty percent of the fair market rental rate, as long as there is a general fund appropriation to compensate the trusts for the remainder of the fair market rental rate. [1994 c 294 § 1.]

Effective date—1994 c 294: "This act shall take effect July 1, 1994." [1994 c 294 § 3.]

79.12.095 Geothermal resources—Guidelines for development. In an effort to increase potential revenue to the geothermal account, the department of natural resources shall, by December 1, 1991, adopt rules providing guidelines and procedures for leasing state-owned land for the development of geothermal resources. [1991 c 76 § 3.]

Geothermal account: Chapter 43.140 RCW.

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

Sections

79.14.010	Definitions.
79.14.020	Leases authorized—Terms—Duration.
79.14.030	Rental fees—Minimum royalties.
79.14.040	Compensation to owners of private rights and to state for surface damage.
79.14.050	Drilling operations beyond lease term—Lease provisions.
79.14.060	Surrender of lease—Liability.
79.14.070	Royalties.
79.14.080	Leases of land within a geologic structure.
79.14.090	Cancellation or forfeiture of leases—New leases.
79.14.100	Cooperative or unit plans—Communization or drilling agreements.
79.14.110	Customary provisions in leases.
79.14.120	Rules and regulations.
79.14.130	Wells to be located minimum distance from boundaries—Exception.
79.14.140	Rights of way over public lands—Payment for timber.
79.14.150	Sales of timber—Rules.
79.14.160	Development after discovery.
79.14.170	Spacing and offsetting of wells.
79.14.180	Lands may be withheld from leasing.
79.14.190	Payment of royalty share—Royalty in kind.
79.14.200	Prior permits validated—Relinquishment for new leases.
79.14.210	Assignments and subleases of leases.
79.14.220	Appeal from rulings of commissioner.
79.14.900	Severability—1955 c 131.

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 redrilling 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 unitized, 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—Communization 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 communization 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 of 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 June 9, 1955, 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.]

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

CAPITOL BUILDING LANDS

Sections

GENERAL

- 79.24.010 Designation of lands—Sale, manner, consent of board.
- 79.24.020 Use of funds restricted.
- 79.24.030 Employment of assistants—Payment of expenses.
- 79.24.060 Disposition of proceeds of sale—Publication of notice of proposals or bids.
- 79.24.085 Disposition of money from sales.
- 79.24.087 Capitol grant revenue to capitol building construction account.

DESCHUTES BASIN

- 79.24.100 Bond issue authorized.
- 79.24.110 Sale of bonds—Price—Investment of funds in.
- 79.24.120 Life of bonds—Payment of interest.
- 79.24.130 Signatures—Registration of bonds.
- 79.24.140 Proceeds to capitol building construction account.
- 79.24.150 Bonds as security and legal investment.
- 79.24.160 Use of proceeds specified.

PARKING FACILITIES

- 79.24.300 Parking facilities authorized—Rental.
- 79.24.310 Number and location of facilities.
- 79.24.320 Appropriations—Parking facilities, laboratories.
- 79.24.330 Purchase of land for parking facilities authorized.
- 79.24.340 Purchase of land for parking facilities authorized—Construction of one-level facility.

SYLVESTER PARK

- 79.24.400 Sylvester Park—Grant authorized.
- 79.24.410 Sylvester Park—Subsurface parking facility.

ACCESS TO CAPITOL GROUNDS

- 79.24.450 Access to capitol grounds on described route authorized.

EAST CAPITOL SITE

- 79.24.500 Property described.
- 79.24.510 Area designated as the east capitol site.
- 79.24.520 Acquisition of property authorized—Means—Other state agencies to assist committee in executing chapter.
- 79.24.530 Department of general administration to design and develop site and buildings—Approval of capitol committee.
- 79.24.540 State agencies may buy land and construct buildings thereon—Requirements.
- 79.24.550 State buildings to be constructed only on capitol grounds—Exception.
- 79.24.560 Department of general administration to rent, lease or use properties.
- 79.24.570 Use of proceeds from site.
- 79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account.
- 79.24.590 Use of private real estate and rights in site declared public use.

- 79.24.600 Severability—1961 c 167.

STATE BUILDINGS AND PARKING FACILITIES—1969 ACT

- 79.24.650 Committee duties enumerated.
- 79.24.652 Bonds authorized—Amount—Interest and maturity—Payable from certain revenues.
- 79.24.654 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable.
- 79.24.656 Signatures—Registration.
- 79.24.658 Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale.
- 79.24.660 Bonds as security and legal investment.
- 79.24.662 Use of bond proceeds.
- 79.24.664 Appropriation.
- 79.24.666 State capitol committee to act upon advice of legislative committee—State capitol committee powers.
- 79.24.668 Severability—1969 ex.s. c 272.

Control of traffic on capitol grounds: RCW 46.08.150 and 46.08.160.

State capitol committee: Chapter 43.34 RCW.

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 department of natural resources 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 RCW 79.24.010 through 79.24.085, and all expenses incurred by the board and department, and all claims against the capitol building construction account shall be audited by the department 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. [1988 c 128 § 62; 1985 c 57 § 76; 1973 c 106 § 37; 1959 c 257 § 43; 1911 c 59 § 12; 1909 c 69 § 7; RRS § 7903.]

Effective date—1985 c 57: See note following RCW 18.04.105.

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:** "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 18.04.105.

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 79.24.060.

Effective date—1985 c 57: See note following RCW 18.04.105.

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 Basin from the Pacific highway at 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 rerouting 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.]

*Reviser's note: RCW 79.24.630 through 79.24.647 were repealed by 1994 c 219 § 21.

79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account. 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 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. During the fiscal biennium ending June 30, 1995, the funds may be appropriated for shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock. During the fiscal biennium ending June 30, 1997, the funds may be appropriated for shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock. [1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 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.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

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 18.04.105.

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

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.]

**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.

Fish and wildlife goals: RCW 79.01.295.

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 department of natural resources, with the advice and approval of 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. [1988 c 128 § 63; 1913 c 102 § 1; RRS § 7824.]

79.28.020 Examination and appraisal. Upon the making of any such agreement, the board of natural resources shall be empowered and it shall be its 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. [1988 c 128 § 64; 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—Appraisement—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 department of natural resources, 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 department of natural resources 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 of the department. One copy of each certificate shall be filed with the department 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 department 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. [1988 c 128 § 65; 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 department of natural resources, 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. [1988 c 128 § 66; 1955 c 225 § 1; 1937 c 87 § 1; RRS § 8074-1.]

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 AND CHARGES AGAINST STATE LANDS

Sections

- 79.44.003 "Assessing district" defined.
79.44.004 "Assessment" defined.
79.44.010 State 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, or impose assessment—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.
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.
Special benefit assessments for farm and agricultural land or timber land: RCW 84.34.300 through 84.34.390.

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, rates, or charges which by statute are expressly made applicable to lands of the state. [1989 c 243 § 13; 1971 ex.s. c 234 § 14; 1963 c 20 § 1.]

79.44.004 "Assessment" defined. As used in this chapter, "assessment" shall mean any assessment, rate or charge levied, assessed, imposed, or charged by any assessing district as defined in RCW 79.44.003, and which assessments, rates or charges by statute are expressly made applicable to lands of the state. [1989 c 243 § 16.]

79.44.010 State 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, or impose assessment—Consent—Notice to port commission. Notice of the intention to make such improvement, or impose any assessment, 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, 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 assessment. 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. [1989 c 243 § 14; 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

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, 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 assessment 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 assessing district. [1989 c 243 § 15; 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	Cooperative agreements.
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.

79.60.010 Cooperative agreements. The department of natural resources with regard to state forest board lands and state granted lands is 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. [1988 c 128 § 67; 1941 c 123 § 1; 1939 c 130 § 1; Rem. Supp. 1941 § 7879-11. Formerly RCW 79.52.070.]

79.60.020 Cooperative units. The department of natural resources is 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 department and included under the cooperative agreement. [1988 c 128 § 68; 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 commissioner of public lands for state granted lands and the board of natural resources for state forest board 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 commissioner of public lands for state granted lands and the board of natural resources for state forest board lands and shall comply with the other conditions and requirements of such cooperative agreement. [1988 c 128 § 69; 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 agree-

ment 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 department of natural resources. [1988 c 128 § 70; 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 department of natural resources determines 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 commissioner of public lands for state granted lands and the board of natural resources for state forest board 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 department 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 department to carry out the purpose of this section and in other ways afford adequate protection to the public interests involved. [1988 c 128 § 71; 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 department, 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 department 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. [1988 c 128 § 72; 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 department of natural resources and the transfer or assignment approved by it in writing. [1988 c 128 § 73; 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 department of natural resources, 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 department of natural resources.

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. [1988 c 128 § 74; 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 trust lands—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.
- 79.64.060 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 34.05.010.

(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 all of the trusts from which the funds were derived. [1993 c 460 § 1; 1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

Effective date—1993 c 460: "This act shall take effect July 1, 1994." [1993 c 460 § 3.]

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—1981 c 4: See note following RCW 28A.515.320.

79.64.030 Expenditures of certain funds in account to be for trust lands—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 pooled and expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering all of the trust lands enumerated in this section. Such funds may be used for similar costs and expenses in managing and administering other lands managed by the department provided 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 a rate determined by the board of natural resources.

An accounting shall be made annually of the accrued expenditures from the pooled trust funds in the account. In the event the accounting determines that expenditures have been made from moneys derived from trust lands for the benefit of other lands, such expenditure shall be considered a debt and an encumbrance against the property 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. The state treasurer is authorized, upon request of the department, to transfer funds between the forest development account and the resource management cost account solely for purpose of repaying loans pursuant to this section. [1993 c 460 § 2; 1988 c 70 § 4; 1977 ex.s. c 159 § 2; 1961 c 178 § 3.]

Effective date—1993 c 460: See note following RCW 79.64.020.

Forest development account: RCW 76.12.110.

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.]

79.64.060 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.
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—Notification of affected public agencies.
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 fish and wildlife and general administration, to the parks and recreation commission, 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. [1994 c 264 § 60; 1988 c 36 § 53; 1984 c 222 § 8.]

79.66.090 Exchange of urban land for land bank land—Notification of affected public agencies. If the department of natural resources determines to exchange urban land for land bank land, public agencies defined in

RCW 79.01.009 that may benefit from owning the property shall be notified in writing of the determination. The public agencies have 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 directly without public auction as authorized under RCW 79.01.009. 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. [1993 c 265 § 1; 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.
- 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.]

*Reviser's note: RCW 79.01.1335 expired December 31, 1984.

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 non-vehicular 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.]

(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.

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 fish and wildlife 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 34.05 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. [1994 c 264 § 61; 1988 c 36 § 54; 1981 c 189 § 3; 1972 ex.s. c 119 § 3.]

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 fish and wildlife, the director of the department of ecology, 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. [1994 c 264 § 62; 1988 c 36 § 55; 1981 c 189 § 4.]

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 fish and wildlife, the state parks and recreation commission, 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. [1994 c 264 § 63; 1988 c 36 § 56; 1981 c 189 § 5.]

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	
79.71.010	Legislative findings.
79.71.020	Characteristics of lands considered for conservation purposes.
79.71.030	Definitions.
79.71.040	Acquisition of property for natural resources conservation areas—Designation.
79.71.050	Transfer of trust land for natural resources conservation areas—Use of proceeds.
79.71.060	Public hearing on proposed conservation area.
79.71.070	Management plans for designated areas.
79.71.080	Administration of natural resources conservation areas—Management agreements and activities.
79.71.090	Natural resources conservation areas stewardship account.
79.71.100	Designation of certain areas as natural resources conservation areas.
79.71.900	Severability—1987 c 472.

79.71.010 Legislative findings. The legislature finds that: (1) 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) such areas are worthy of conservation for their outstanding scenic and ecological values and provide opportunities for low-impact public use; (3) in certain cases acquisition of property or rights in property is necessary to protect these areas for public purposes; and (4) there is a need for a state agency to act in an effective and timely manner to acquire interests in such

areas and to develop appropriate management strategies for conservation purposes. [1991 c 352 § 1; 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 low-impact public use values;

(2) An area of land or water, or land and water, that has flora, fauna, geological, archaeological, scenic, or similar features of critical importance to the people of Washington and that has retained to some degree or has reestablished its natural character;

(3) Examples of native ecological communities; and

(4) Environmentally significant sites threatened with conversion to incompatible or ecologically irreversible uses. [1991 c 352 § 2; 1987 c 472 § 2.]

79.71.030 Definitions. As used in this chapter:

"Commissioner" means the commissioner of public lands.

"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.

"Low-impact public use" includes public recreation uses and improvements that do not adversely affect the resource values, are appropriate to the maintenance of the site in a relatively unmodified natural setting, and do not detract from long-term ecological processes.

"Management activities" 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.

"Natural resources conservation area" or "conservation area" means an area having the characteristics identified in RCW 79.71.020. [1991 c 352 § 3; 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 natural resources conservation 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 natural resources conservation areas, provided the owner of the trust land receives 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. [1991 c 352 § 4; 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 natural resources conservation area is located prior to establishing the boundary. An area proposed for designation must contain resources consistent with characteristics identified in RCW 79.71.020. [1991 c 352 § 5; 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 low-impact public and environmental educational uses. The plan shall specify what types of management activities and public uses that are 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, prior to final approval by the commissioner. [1991 c 352 § 6; 1987 c 472 § 7.]

79.71.080 Administration of natural resources conservation areas—Management agreements and activities. The department is authorized to administer natural resources conservation areas and may enter into management agreements for these areas with federal agencies, 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 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 natural resources conservation areas stewardship account. [1991 c 352 § 7; 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, grants, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Income derived from the management of natural resources 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 the following: (1) To manage the areas approved by the legislature in fulfilling the purposes of this chapter; (2) to manage property acquired as natural area preserves under chapter 79.70 RCW; (3) to manage property transferred under the authority and appropriation provided by the legislature to be managed under chapter 79.70 RCW or this chapter or acquired under chapter 43.98A RCW; and (4) to pay for operating expenses for the natural heritage program under chapter 79.70 RCW. [1991 sp.s. c 13 § 118; 1991 c 352 § 8; 1987 c 472 § 9.]

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

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.]

79.71.900 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.
79.72.020	Definitions—Committee of participating agencies.
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 wildlife 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	Wildlife 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, fish and wildlife, natural resources, and transportation, the state parks and recreation commission, the inter-agency 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 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. [1994 c 264 § 64; 1988 c 36 § 57; 1987 c 57 § 1; 1984 c 7 § 371; 1977 ex.s. c 161 § 2.]

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 34.05 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 34.05 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, in accord with chapter 34.05 RCW, the Administrative Procedure Act, for each portion of the system, which shall implement the management policies. In developing rules 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 hearing may constitute the hearing required by chapter 34.05 RCW. The department shall cause a brief summary of the proposed rules to be published twice in a newspaper of general circulation in the area that 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, and decisions of the department to radio and television stations and major local newspapers in the areas that 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 adopted under this section or agreements made under the provisions of this chapter. [1989 c 175 § 169; 1977 ex.s. c 161 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 wildlife unaffected. Nothing contained in this chapter shall affect the authority of the *department of fisheries and the *department of wildlife 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 wildlife 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. [1988 c 36 § 58; 1977 ex.s. c 161 § 7.]

*Reviser's note: Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

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;

(3) The Tye river from its junction with the south fork of the Skykomish river upstream approximately fourteen miles to Tye Lake; and

(4) The Little Spokane river from the upstream boundary of the state park boat put-in site near Rutter parkway and downstream to its confluence with the Spokane river. [1991 c 206 § 1; 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 Wildlife fund moneys not to be used. No funds shall be expended from the wildlife fund to carry out the provisions of this chapter. [1988 c 36 § 59; 1977 ex.s. c 161 § 10.]

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

79.76.010	Legislative declaration.
79.76.020	Short title.
79.76.030	Definitions.
79.76.040	Geothermal resources deemed sui generis.
79.76.050	Administration of chapter.
79.76.060	Scope of chapter.
79.76.070	Drilling permits—Applications—Hearing—Fees.
79.76.080	Drilling permits—Criteria for granting.
79.76.090	Casing requirements.
79.76.100	Plugging and abandonment of wells—Transfer of jurisdiction to department of ecology.
79.76.110	Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment.
79.76.120	Notification of abandonment or suspension of operations—Required—Procedure.
79.76.130	Performance bond or other security—Required.
79.76.140	Termination or cancellation of bond or change in other security, when.
79.76.150	Notification of sale, exchange, etc.

79.76.160	Combining orders, unitization programs and well spacing—Authority of department.
79.76.170	Designation of resident agent for service of process.
79.76.180	General authority of department.
79.76.190	Employment of personnel.
79.76.200	Drilling records, etc., to be maintained—Inspection—Filing.
79.76.210	Filing of records with department upon completion, abandonment or suspension of operations.
79.76.220	Statement of geothermal resources produced—Filing.
79.76.230	Confidentiality of records.
79.76.240	Removal, destruction, alteration, etc., of records prohibited.
79.76.250	Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal.
79.76.260	Liability in damages for violations—Procedure.
79.76.270	Injunctions—Restraining orders.
79.76.280	Judicial review.
79.76.290	Violations—Penalty.
79.76.300	Aiding or abetting violations.
79.76.900	Severability—1974 ex.s. c 43.

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 34.05 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 infor-

mation 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 34.05 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 79.81

MARINE PLASTIC DEBRIS

Sections

79.81.010	Intent.
79.81.020	Definitions.
79.81.030	Coordinating implementation—Rules.
79.81.040	Agreements with other entities.
79.81.050	Employees—Information clearinghouse contracts.
79.81.060	Grants, funds, or gifts.
79.81.900	Severability—1989 c 23.

79.81.010 Intent. The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner of public lands appointed the marine plastic debris task force which presented a state action plan in

October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;
- (4) Foster the stewardship of the aquatic lands of the state. [1989 c 23 § 1.]

79.81.020 Definitions. As used in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner of public lands by the marine plastic debris task force. [1989 c 23 § 2.]

79.81.030 Coordinating implementation—Rules.

The department shall have the authority to coordinate implementation of the plan with appropriate state agencies including the parks and recreation commission and the departments of ecology and fish and wildlife. The department is authorized to promulgate, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris. [1994 c 264 § 65; 1989 c 23 § 3.]

79.81.040 Agreements with other entities. The department may enter into intergovernmental agreements with federal or state agencies and agreements with private parties deemed necessary by the department to carry out the provisions of this chapter. [1989 c 23 § 4.]

79.81.050 Employees—Information clearinghouse contracts. The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for marine plastic debris related issues. [1989 c 23 § 5.]

79.81.060 Grants, funds, or gifts. The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds hereby appropriated to carry out the purposes of this chapter. [1989 c 23 § 6.]

79.81.900 Severability—1989 c 23. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 23 § 7.]

Chapter 79.90

AQUATIC LANDS—IN GENERAL

Sections

- 79.90.010 "Aquatic lands."
- 79.90.015 "Outer harbor line."
- 79.90.020 "Harbor area."
- 79.90.025 "Inner harbor line."
- 79.90.030 "First class tidelands."
- 79.90.035 "Second class tidelands."
- 79.90.040 "First class shorelands."
- 79.90.045 "Second class shorelands."
- 79.90.050 "Beds of navigable waters."
- 79.90.055 "Improvements."
- 79.90.060 "Valuable materials."
- 79.90.065 "Person."
- 79.90.070 Harbor line commission.
- 79.90.080 Board of natural resources—Records—Rules and regulations.
- 79.90.090 Sale and lease of state-owned aquatic lands—Blank forms of applications.
- 79.90.100 Who may purchase or lease—Application—Fees.
- 79.90.105 Private recreational docks.
- 79.90.110 Date of sale limited by time of appraisal.
- 79.90.120 Survey to determine areas subject to sale or lease.
- 79.90.130 Valuable materials from Columbia river—Agreements with Oregon.
- 79.90.150 Material removed for channel or harbor improvement or flood control—Use for public purpose.
- 79.90.160 Mt. St. Helen's eruption—Dredge spoils—Sale by certain landowners.
- 79.90.170 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when.
- 79.90.180 Sale procedure—Pamphlet list of lands or materials—Notice of sale—Proof of publishing and posting.
- 79.90.190 Sale procedure—Additional advertising expense.
- 79.90.200 Sale procedure—Place of sale—Hours—Reoffer—Continuance.
- 79.90.210 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction.
- 79.90.215 Highest responsible bidder—Determination.
- 79.90.220 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.
- 79.90.230 Sale procedure—Readvertisement of lands not sold.
- 79.90.240 Sale procedure—Confirmation of sale.
- 79.90.250 Sale procedure—Terms of payment—Deferred payments, rate of interest.
- 79.90.260 Sale procedure—Certificate to governor of payment in full—Deed.
- 79.90.270 Sale procedure—Reservation in contract.
- 79.90.280 Sale procedure—Form of contract—Forfeiture—Extension of time.
- 79.90.290 Bill of sale for valuable material sold separately.
- 79.90.300 Sale of rock, gravel, sand, silt, and other valuable materials.
- 79.90.310 Sale of rock, gravel, sand and silt—Application—Terms of lease or contract—Bond—Payment—Reports.
- 79.90.320 Sale of rock, gravel, sand and silt—Investigation, audit of books of person removing.
- 79.90.325 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.
- 79.90.330 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.
- 79.90.340 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.
- 79.90.350 Subdivision of leases—Fee.
- 79.90.360 Effect of mistake or fraud.
- 79.90.370 Assignment of contracts or leases.
- 79.90.380 Abstracts of state-owned aquatic lands.
- 79.90.390 Distraint or sale of improvements for taxes.
- 79.90.400 Aquatic lands—Court review of actions.
- 79.90.410 Reconsideration of official acts.
- 79.90.450 Aquatic lands—Findings.

- 79.90.455 Aquatic lands—Management guidelines.
- 79.90.457 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.
- 79.90.460 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.
- 79.90.465 Definitions.
- 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.
- 79.90.475 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement.
- 79.90.480 Determination of annual rent rates for lease of aquatic lands for water-dependent uses.
- 79.90.485 Log storage rents.
- 79.90.490 Rent for leases in effect October 1, 1984.
- 79.90.495 Rents and fees for aquatic lands used for aquaculture production and harvesting.
- 79.90.500 Aquatic lands—Rents for nonwater-dependent uses—Rents and fees for the recovery of mineral or geothermal resources.
- 79.90.505 Aquatic lands—Rents for multiple uses.
- 79.90.510 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use.
- 79.90.515 Aquatic lands—Rent for improvements.
- 79.90.520 Aquatic lands—Administrative review of proposed rent.
- 79.90.525 Aquatic lands—Security for leases for more than one year.
- 79.90.530 Aquatic lands—Payment of rent.
- 79.90.535 Aquatic lands—Interest rate.
- 79.90.540 Adoption of rules.
- 79.90.545 Application to existing property rights—Application of Shoreline Management Act.
- 79.90.550 Aquatic land disposal sites—Legislative findings.
- 79.90.555 Aquatic land dredged material disposal site account.
- 79.90.560 Fees for use of aquatic land dredged material disposal sites authorized.
- 79.90.565 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.
- 79.90.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.90.901 Severability—1984 c 221.
- 79.90.902 Effective date—1984 c 221.

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 an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. Nothing in this section prevents the abutting owner from obtaining a lease if otherwise provided by law. [1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 from Columbia river—Agreements with Oregon. 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. [1991 c 322 § 24; 1982 1st ex.s. c 21 § 19.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

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. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. 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. [1991 c 337 § 1; 1982 1st ex.s. c 21 § 21.]

79.90.160 Mt. St. Helen's eruption—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, Coweeman 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, 1995, 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. [1989 c 213 § 4; 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 to do, 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. All sales of tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, shall be at public auction and all sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value: PROVIDED, That when valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold. However, any sale of valuable material on aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [1990 c 163 § 1; 1982 1st ex.s. c 21 § 27.]

79.90.215 Highest responsible bidder—Determination. (1) To determine the "highest responsible bidder" under RCW 79.90.210, the department of natural resources shall be entitled to consider, in addition to price, the following:

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

(b) Whether the bid contains material defects;

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

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

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

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

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240. [1990 c 163 § 2.]

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.

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

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the commissioner of public lands within ten days from the receipt of the report of the auctioneer conducting the sale;

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

(c) The commissioner is satisfied that the lands or material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

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

(2) Upon confirming a sale, the commissioner shall enter upon his records the confirmation of sale and thereupon issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [1990 c 163 § 3; 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, silt, and other valuable materials.

The department of natural resources, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials 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, by negotiation, by sealed bid, or at public auction. If 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 in the application. [1991 c 322 § 26; 1982 1st ex.s. c 21 § 36.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

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.]

79.90.325 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. Formerly RCW 79.01.135.]

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.]

79.90.457 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation. The department of natural resources may exchange state-owned tidelands and shorelands with private and other public

landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455. The board of natural resources shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.90.455. The department may not exchange state-owned harbor areas or waterways. [1995 c 357 § 1.]

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 nonwater-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 fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. 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. [1991 c 64 § 1; 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 rate. The interest rate and all interest rate guidelines 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. [1991 c 64 § 2; 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.]

*Reviser's note: The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§

11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903.

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. [1991 sp.s. c 13 § 63; 1987 c 259 § 2.]

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

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.

79.90.565 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances. After consultation with the director of community, trade, and economic development, the department of natural resources may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. Such agreements, leases, or other conveyances may contain such conditions as are required for the department of natural resources to comply with its legal rights and duties. All such agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.90 through 79.96 RCW. [1995 c 399 § 210; 1988 c 124 § 9.]

Severability—Intent—Application—1988 c 124: See RCW 27.53.901 and notes following RCW 27.53.030.

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.
- 79.91.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way.
- 79.91.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser.
- 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.
- 79.91.150 Right of way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser.
- 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.
- 79.92.020 Relocation of harbor lines by the harbor line commission.
- 79.92.030 Relocation of harbor lines authorized by legislature.
- 79.92.035 Modification of harbor lines in Port Gardner Bay.
- 79.92.060 Terms of harbor area leases.
- 79.92.070 Construction or extension of docks, wharves, etc., in harbor areas—New lease.
- 79.92.080 Re-leases of harbor areas.
- 79.92.090 Procedure to re-lease harbor areas.
- 79.92.100 Regulation of wharfage, dockage, and other tolls.
- 79.92.110 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.
- 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); in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city. [1989 c 79 § 1; 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.
- 79.93.050 Excavation of waterways—Waterways open to public—Tide gates or locks.
- 79.93.060 Vacation of waterways—Extension of streets.
- 79.93.070 Copies of waterway permits or leases existing on October 1, 1984, to be delivered to the department—Exception.
- 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

- 79.94.010 Survey to determine area subject to sale or lease.
- 79.94.020 First class tidelands and shorelands to be platted.
- 79.94.030 Second class tidelands and shorelands may be platted.
- 79.94.040 Tidelands and shorelands of the first class and second class—Plats—Record.
- 79.94.050 Tidelands and shorelands of the first class and second class—Appraisal—Record.
- 79.94.060 Tidelands and shorelands of the first class and second class—Notice of filing plat and record of appraisal—Appeal.
- 79.94.070 Tidelands and shorelands of the first class—Preference right of upland owner—How exercised.
- 79.94.080 Tide and shore lands—Sale of remaining lands.
- 79.94.090 Sale of tidelands other than first class.
- 79.94.100 Tidelands and shorelands of the first and second class—Petition for replat—Replating and reappraisal—Vacation by replat.
- 79.94.110 Tidelands and shorelands of the first and second class—Dedication of replat—All interests must join.
- 79.94.120 Tidelands and shorelands of the first and second class—Vacation by replat—Preference right of tideland or shoreland owner.
- 79.94.130 Tidelands and shorelands of the first and second class—Vacation procedure cumulative.
- 79.94.140 Tidelands and shorelands of the first and second class—Effect of replat.
- 79.94.150 First and second class tidelands and shorelands and waterways of state to be sold only to public entities—Leasing—Limitation.
- 79.94.160 Sale of state-owned tide or shore lands to municipal corporation or state agency—Authority to execute agreements, deeds, etc.
- 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.
- 79.94.210 Second class shorelands on navigable lakes—Sale.

- 79.94.220 Second class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.
- 79.94.230 Second class shorelands—Platting—Selection for slips, docks, wharves, etc.
- 79.94.240 Second class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect.
- 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.
- 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.
- 79.94.270 Second class tide or shore lands detached from uplands by navigable water—Sale.
- 79.94.280 First class unplatted tide or shore lands—Lease preference right to upland owners—Lease for booming purposes.
- 79.94.290 Second class tide or shore lands—Lease for booming purposes.
- 79.94.300 First and second class tide or shore lands—Preference rights, time limit on exercise.
- 79.94.310 First and second class tide or shore lands—Accretions—Lease.
- 79.94.320 Tide or shore lands of the first or second class—Failure to re-lease tide or shore lands—Appraisal of improvements.
- 79.94.330 Location of line dividing tidelands from shorelands in tidal rivers.
- 79.94.390 Certain tidelands reserved for recreational use and taking of fish and shellfish.
- 79.94.400 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.
- 79.94.410 Tidelands and shorelands—Use of tide and shore lands granted to United States—Purposes—Limitations.
- 79.94.420 Tidelands and shorelands—Use of tide and shore lands granted to United States—Application—Proof of upland use—Conveyance.
- 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.
- 79.94.440 Tidelands and shorelands—Use of tide and shore lands granted to United States—Reversion on cessation of use.
- 79.94.450 United States Navy base—Exchange of property—Procedure.
- 79.94.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.

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 appraisalment.

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 nonresident 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 34.05 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 dedica-

tion 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 after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review such cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, 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 34.05.510 through 34.05.598. [1989 c 378 § 3; 1989 c 175 § 171; 1982 1st ex.s. c 21 § 106.]

Reviser's note: This section was amended by 1989 c 175 § 171 and by 1989 c 378 § 3, 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—1989 c 175: See note following RCW 34.05.010.

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 nonresident 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 34.05 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 compa-

nies 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.]

79.94.390 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 fish and wildlife 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. [1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124.]

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 fish and wildlife 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. [1994 c 264 § 67; 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 men-

tioned 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 fish and wildlife—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—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 fish and wildlife.
- 79.96.110 Vacation of reserve—Lease of lands.
- 79.96.120 Sale of reserved or reversionary rights in tidelands.
- 79.96.130 Wrongful taking of shellfish from public lands—Civil remedies.
- 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.

79.96.010 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 thirty years.

Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [1993 c 295 § 1; 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 fish and wildlife—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 fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife 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 or her 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, the director 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 or her 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 fish and wildlife. 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. [1994 c 264 § 68; 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 or she shall furnish to the department of natural resources and to the director of fish and wildlife, 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 fish and wildlife may direct. [1994 c 264 § 69; 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 or she deems it in the best interests of the state to re-lease said lands, he or she shall issue to the applicant a renewal lease for such further period not exceeding thirty 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 fish and wildlife. [1994 c 264 § 70; 1993 c 295 § 2; 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—Agreements, regulation. (1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): PROVIDED, That for the purposes of this section and RCW 75.24.100 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is secured. [1990 c 163 § 4; 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 that are available for geoduck harvesting by licensed geoduck harvesters in accordance with chapter 79.90 RCW. [1990 c 163 § 5; 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, 75.28.750.

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 fish and wildlife. 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 fish and wildlife of the filing of the application describing the lands applied for. It shall be the duty of the director of fish and wildlife 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. [1994 c 264 § 71; 1982 1st ex.s. c 21 § 143.]

79.96.110 Vacation of reserve—Lease of lands. In case the director of fish and wildlife 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. [1994 c 264 § 72; 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.]

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

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

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

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

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

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

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

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

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of regulations of the department of fish and wildlife. [1994 c 264 § 73; 1990 c 163 § 9.]

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 fish and wildlife 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. [1994 c 264 § 74; 1984 c 221 § 26.]

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.
- 80.66** Radio communications service companies.
- 80.98** Construction.

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 23B.01.590.

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 telecommunications service: RCW 9.26A.110.

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—Designated persons for emergency adjudications.
- 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.

Clean fuel report to legislature: RCW 70.120.220.

Collection agencies, retained by public bodies to collect debts: RCW 19.16.500.

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 employee 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. [1995 c 331 § 2; 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—Designated persons for emergency adjudications. (1) The commission may designate employees of the commission as hearing examiners, administrative law judges, and review judges when it deems such action necessary for its general administration. The designated employees 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 as the commission may adopt.

(2) In general rate increase filings by a natural gas, electric, or telecommunications company, the designated employee may preside, but may not enter an initial order unless expressly agreed to in writing by the company making the filing. In all other cases, the designated employee may enter an initial order including findings of fact and conclusions of law in accordance with RCW 34.05.461(1)(a) and (c) and (3) through (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry of orders under this section. The designated employee may not enter final orders, except that the commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479.

(3) If the designated employee does not enter an initial order as provided in subsection (2) of this section, then a majority of the members of the commission who are to enter the final order must hear or review substantially all of the record submitted by any party. [1995 c 331 § 3; 1991 c 48 § 1; 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

Sections

80.04.010	Definitions.
80.04.015	Conduct of business subject to regulation—Determination by commission.
80.04.020	Procedure before commission and courts.
80.04.030	Number of witnesses may be limited.
80.04.040	Witness fees and mileage.
80.04.050	Protection against self-incrimination.
80.04.060	Depositions—Service of process.
80.04.070	Inspection of books, papers, and documents.
80.04.075	Manner of serving papers.
80.04.080	Annual reports.
80.04.090	Forms of records to be prescribed.
80.04.095	Protection of records containing commercial information.
80.04.100	Production of out-of-state books and records.
80.04.110	Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits.
80.04.120	Hearing—Order—Record.
80.04.130	Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance program service.
80.04.140	Order requiring joint action.
80.04.150	Remunerative rates cannot be changed without approval.
80.04.160	Rules and regulations.
80.04.170	Review of orders.
80.04.180	Supersedeas—Water companies seeking supersedeas.
80.04.190	Appellate review.
80.04.200	Rehearing before commission.
80.04.210	Commission may change orders.
80.04.220	Reparations.
80.04.230	Overcharges—Refund.
80.04.240	Action in court on reparations and overcharges.
80.04.250	Valuation of public service property.
80.04.260	Summary proceedings.
80.04.270	Merchandise accounts to be kept separate.
80.04.280	Purchase and sale of stock by employees.
80.04.290	Sales of stock to employees and customers.
80.04.300	Budgets to be filed by companies—Supplementary budgets.
80.04.310	Commission's control over expenditures.
80.04.320	Budget rules.
80.04.330	Effect of unauthorized expenditure—Emergencies.
80.04.350	Depreciation and retirement accounts.
80.04.360	Earnings in excess of reasonable rate—Consideration in fixing rates.
80.04.380	Penalties—Violations by public service companies.
80.04.385	Penalties—Violations by officers, agents, and employees of public service companies.
80.04.387	Penalties—Violations by other corporations.
80.04.390	Penalties—Violations by persons.
80.04.400	Actions to recover penalties—Disposition of fines, penalties, and forfeitures.
80.04.405	Additional penalties—Violations by public service companies and officers, agents, and employees thereof.
80.04.410	Orders and rules conclusive.
80.04.420	Intervention by commission where order or rule is involved.
80.04.430	Findings of commission prima facie correct.
80.04.440	Companies liable for damages.
80.04.450	Certified copies of orders, rules, etc.—Evidentiary effect.
80.04.460	Investigation of accidents.
80.04.470	Commission to enforce public service laws—Employees as peace officers.
80.04.480	Rights of action not released—Penalties cumulative.

80.04.500	Application to municipal utilities.
80.04.510	Duties of attorney general.
80.04.520	Approval of lease of utility facilities.
80.04.530	Local exchange company that serves less than two percent of state's access lines—Regulatory exemptions—Reporting requirements.
80.04.550	Thermal energy—Restrictions on authority of commission.

80.04.010 Definitions. As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

"Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

"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.

"Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

"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.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"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 34.05 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 or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"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 health.

The term "service" is used in this title in its broadest and most inclusive sense. [1995 c 243 § 2; 1991 c 100 § 1; 1989 c 101 § 2; 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.]

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

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.

Until July 1, 1994, in any proceeding instituted under this section to determine whether a person or corporation owning, controlling, operating, or managing a water system is subject to commission regulation, and where the person or corporation has failed or refused to provide sufficient information or documentation to enable the commission to make such a determination, the burden shall be on such person or corporation to prove that the person's or

corporation's operations or acts are not subject to commission regulation. [1991 c 101 § 1; 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 on such date as the commission specifies by rule, 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. [1989 c 107 § 1; 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—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits. (1) 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, or at least twenty-five percent of the consumers or purchasers of the company's 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.

(2) 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.

(3) 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. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

(4) The commission shall, as appropriate, audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapters 70.116 and 70.119A RCW, and the results of the audit shall be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

Every nonmunicipal water system referred to the commission for audit under this section shall pay to the commission an audit fee in an amount, based on the

system's twelve-month audited period, equal to the fee required to be paid by regulated companies under RCW 80.24.010.

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company shall not take any steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test. [1995 c 376 § 12. Prior: 1991 c 134 § 1; 1991 c 100 § 2; prior: 1989 c 207 § 2; 1989 c 101 § 17; 1985 c 450 § 11; 1961 c 14 § 80.04.110; prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Findings—1995 c 376: See note following RCW 70.116.060.

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Drinking water standards: Chapters 43.21A, 70.119A, and 80.28 RCW.

80.04.120 Hearing—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 change—Mandatory measured telecommunications service—Washington telephone assistance program 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 shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

For the purposes of this section, tariffs for the following telecommunications services, that temporarily waive or reduce charges for existing or new subscribers for a period not to exceed sixty days in order to promote the use of the services shall be considered tariffs that decrease rates, charges, rentals, or tolls:

- (a) Custom calling service;
- (b) Second access lines; or
- (c) Other services the commission specifies by rule.

The commission may suspend any promotional tariff other than those listed in (a) through (c) of this subsection.

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, 1998, 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 Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service. [1993 c 311 § 1; 1992 c 68 § 1; 1990 c 170 § 1; 1989 c 101 § 13. Prior: 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.]

Effective date—1993 c 311: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 311 § 2.]

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—Water companies seeking supersedeas. (1) 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.

(2) 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. 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. A water company seeking a supersedeas must demonstrate to the court that it is in compliance with the state board of health standards adopted pursuant to RCW 43.20.050 and chapter 70.116 RCW relating to the purity, volume, and pressure of water.

(3) 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.

(4) 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. [1989 c 207 § 3; 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 Appellate review. The commission, any public service company or any complainant may, after the entry of judgment in the superior court in any action of review, seek appellate review as in other cases. [1988 c 202 § 60; 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.

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

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. 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. In determining what property is used and useful for providing electric, gas, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

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. [1991 c 122 § 2; 1961 c 14 § 80.04.250. Prior: 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

Findings—1991 c 122: "The legislature finds that the state is facing an energy shortage as growth occurs and that inadequate supplies of energy will cause harmful impacts on the entire range of state citizens. The legislature further finds that energy efficiency improvement is the single most effective near term measure to lessen the risk of energy shortage. In the area of electricity, the legislature additionally finds that the Northwest power planning council has made several recommendations, including an update of the commercial building energy code and granting flexible ratemaking alternatives for utility commissions to encourage prudent acquisition of new electric resources." [1991 c 122 § 1.]

Severability—1991 c 122: "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." [1991 c 122 § 4.]

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. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, 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. [1988 c 202 § 61; 1971 c 81 § 140; 1961 c 14 § 80.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

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

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 supplement-

tary 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. The commission may prescribe the necessary rules to place RCW 80.04.300 through 80.04.330 in operation. It may, by rule, establish criteria to exempt companies in whole or in part from the operation thereof. 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. [1989 c 107 § 3; 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 Earnings in excess of reasonable rate—Consideration in fixing rates. 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.]

80.04.530 Local exchange company that serves less than two percent of state's access lines—Regulatory exemptions—Reporting requirements. (1)(a) Except as provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company. [1995 c 110 § 1.]

80.04.550 Thermal energy—Restrictions on authority of commission. (1) Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges for 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 district thermal energy system owned and operated by any thermal energy company.

(2) For the purposes of this section:

(a) "Thermal energy company" means any private person, company, association, partnership, joint venture, or corporation engaged in or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public thermal energy services for any beneficial use other than electricity generation;

(b) "District thermal energy system" means any system that provides thermal energy for space heating, space cooling, or process uses from a central plant, and that

distributes the thermal energy to two or more buildings through a network of pipes;

(c) "Thermal energy" means heat or cold in the form of steam, heated or chilled water, or any other heated or chilled fluid or gaseous medium; and

(d) "Thermal energy services" means the provision of thermal energy from a district thermal energy system and includes such ancillary services as energy audits, metering, billing, maintenance, and repairs related to thermal energy. [1996 c 33 § 2.]

Findings—1996 c 33: "(1) The legislature finds:

(a) The Washington utilities and transportation commission has the authority to regulate district heating suppliers on the basis of financial solvency, system design integrity, and reasonableness of contract rates and rate formulas under *chapter 80.62 RCW;

(b) Consumers have competitive alternatives to thermal energy companies for space heating and cooling and ancillary services;

(c) Consumers have recourse against thermal energy companies for unfair business practices under the consumer protection act; and

(d) Technology and marketing opportunities have advanced since the enactment of *chapter 80.62 RCW to make the provision of cooling services, as well as heating services, an economical option for consumers.

(2) The legislature declares that the public health, safety, and welfare does not require the regulation of thermal energy companies by the Washington utilities and transportation commission." [1996 c 33 § 1.]

*Reviser's note: Chapter 80.62 RCW was repealed by 1996 c 33 § 3.

Chapter 80.08 SECURITIES

Sections

80.08.010	Definition.
80.08.020	Control vested in state.
80.08.030	Authority to issue.
80.08.040	Prior to issuance—Filing required—Contents—Request for order establishing compliance.
80.08.080	Capitalization of franchises or merger contracts prohibited.
80.08.090	Accounting for disposition of proceeds.
80.08.100	Issuance made contrary to this chapter—Penalties.
80.08.110	Penalty against companies.
80.08.120	Penalty against individuals.
80.08.130	Assumption of obligation or liability—Compliance with filing requirements.
80.08.140	State not obligated.
80.08.150	Authority of commission—Not affected by requirements of this chapter.
80.08.160	Small local exchange company—Chapter does not apply.

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 Prior to issuance—Filing required—Contents—Request for order establishing compliance. Any public service company that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

(1) A description of the purposes for which the issuance is made, including a certification by an officer authorized to do so that the proceeds from any such financing is for one or more of the purposes allowed by this chapter;

(2) A description of the proposed issuance including the terms of financing; and

(3) A statement as to why the transaction is in the public interest.

(4) Any public service company undertaking an issuance and making a filing in conformance with this section may at any time of such filing request the commission to enter a written order that such company has complied with the requirements of this section. The commission shall enter such written order after such company has provided all information and statements required by subsections (1), (2), and (3) of this section. [1994 c 251 § 1; 1987 c 106 § 1; 1961 c 14 § 80.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

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 Issuance made contrary to this chapter—Penalties. If a public service company issues any stock, or other evidence of interest or ownership, bond, note, or other evidence of indebtedness contrary to the provisions of this chapter, the company may be subject to penalty under RCW 80.08.110 and 80.08.120. [1994 c 251 § 2; 1961 c 14 § 80.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

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 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 allowed by this chapter, shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation 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. [1994 c 251 § 3; 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 contrary to the provisions of this chapter, or who 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, 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 allowed by this chapter, 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. [1994 c 251 § 4; 1961 c 14 § 80.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

80.08.130 Assumption of obligation or liability—Compliance with filing requirements. Any public service company that assumes 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, shall comply with the filing requirements of RCW 80.08.040. [1994 c 251 § 5; 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.]

80.08.150 Authority of commission—Not affected by requirements of this chapter. No action by a public service company in compliance with nor by the commission in conformance with the requirements of this chapter may in any way affect the authority of the commission over rates, service, accounts, valuations, estimates, or determinations of costs, or any matters whatsoever that may come before it. [1994 c 251 § 6.]

80.08.160 Small local exchange company—Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 2.]

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.
80.12.045	Small local exchange company—Chapter does not apply.
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.]

80.12.045 Small local exchange company—Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 3.]

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.
80.16.055	Small local exchange company—Chapter does not apply.
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.]

80.16.055 Small local exchange company—Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 4.]

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—Delinquent fee payments.
- 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 23B.01.530, 23B.01.590.

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—Delinquent fee payments. Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, 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.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 1; 1990 c 48 § 1; 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

80.28.005	Definitions.
80.28.010	Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating.
80.28.020	Commission to fix just, reasonable, and compensatory rates.
80.28.022	Water company rates—Reserve account.
80.28.024	Legislative finding.
80.28.025	Encouragement of energy cogeneration, conservation, and production from renewable resources—Consideration of water conservation goals.
80.28.030	Commission may order improved quality of commodity—Water companies, board of health standards.
80.28.040	Commission may order improved service—Water companies, noncompliance, receivership.
80.28.050	Tariff schedules to be filed with commission—Public schedules.
80.28.060	Tariff changes—Statutory notice—Exception.
80.28.065	Tariff schedule—Energy conservation—Payment by successive property owners—Notice—Rules.
80.28.070	Sliding scale of charges permitted.
80.28.074	Legislative declaration.
80.28.075	Banded rates—Natural gas and electric services.
80.28.080	Published rates to be charged—Exceptions.
80.28.090	Unreasonable preference 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.
80.28.185	Water companies within counties—Commission may regulate.
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—Level of penalty—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.
80.28.260	Adoption of policies to provide financial incentives for energy efficiency programs.
80.28.270	Water companies—Extension, installation, or connection charges.
80.28.275	Water companies—Assumption of substandard water system—Limited immunity from liability.
80.28.280	Compressed natural gas—Motor vehicle refueling stations—Public interest.
80.28.290	Compressed natural gas—Refueling stations—Identify barriers.
80.28.300	Gas, electrical companies authorized to provide customers with landscaping information and to request voluntary donations for urban forestry.
80.28.303	Conservation service tariff—Contents of filing—Rate base—Duties of commission.
80.28.306	Conservation bonds—Conservation investment assets as collateral—Priority of security interests—Transfers.
80.28.309	Costs as bondable conservation investment.

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 and low-income disabled citizens: RCW 74.38.070.

80.28.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bondable conservation investment" means all expenditures made by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of electricity, gas, or water end use, including related carrying costs if:

(a) The conservation measures and services do not produce assets that would be bondable utility property under the general utility mortgage of the electrical, gas, or water company;

(b) The commission has determined that the expenditures were incurred in conformance with the terms and conditions of a conservation service tariff in effect with the commission at the time the costs were incurred, and at the time of such determination the commission finds that the company has proven that the costs were prudent, that the terms and conditions of the financing are reasonable, and that financing under this chapter is more favorable to the customer than other reasonably available alternatives;

(c) The commission has approved inclusion of the expenditures in rate base and has not ordered that they be currently expensed; and

(d) The commission has not required that the measures demonstrate that energy savings have persisted at a certain

level for a certain period before approving the cost of these investments as bondable conservation investment.

(2) "Conservation bonds" means bonds, notes, certificates of beneficial interests in trusts, or other evidences of indebtedness or ownership that:

(a) The commission determines at or before the time of issuance are issued to finance or refinance bondable conservation investment by an electrical, gas or water company; and

(b) Rely partly or wholly for repayment on conservation investment assets and revenues arising with respect thereto.

(3) "Conservation investment assets" means the statutory right of an electrical, gas, or water company:

(a) To have included in rate base all of its bondable conservation investment and related carrying costs; and

(b) To receive through rates revenues sufficient to recover the bondable conservation investment and the costs of equity and debt capital associated with it, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds.

(4) "Finance subsidiary" means any corporation, company, association, joint stock association, or trust that is beneficially owned, directly or indirectly, by an electrical, gas, or water company, or in the case of a trust issuing conservation bonds consisting of beneficial interests, for which an electrical, gas, or water company or a subsidiary thereof is the grantor, or an unaffiliated entity formed for the purpose of financing or refinancing approved conservation investment, and that acquires conservation investment assets directly or indirectly from such company in a transaction approved by the commission. [1994 c 268 § 1.]

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) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic 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;

(c) 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;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) 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

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) 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;

(b) Assist the customer in fulfilling the requirements under this section;

(c) 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;

(d) 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; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) 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.

(8) 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.

(9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1995 c 399 § 211. Prior: 1991 c 347 § 22; 1991 c 165 § 4; 1990 1st ex.s. c 1 § 5; 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.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Findings—1991 c 165: See note following RCW 35.21.300.

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.]

80.28.022 Water company rates—Reserve account. In determining the rates to be charged by each water company subject to its jurisdiction, the commission may provide for the funding of a reserve account exclusively for the purpose of making capital improvements approved by the department of health as a part of a long-range plan, or required by the department to assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to secure safety to life and property under RCW 43.21A.064(2). Expenditures from the fund shall be subject to prior approval by the commission, and shall be treated for rate-making purposes as customer contributions. [1991 c 150 § 1; 1990 c 132 § 6.]

Legislative findings—Severability—1990 c 132: See note following RCW 43.20.240.

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, the use of appropriate tree plantings for energy conservation, 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. [1993 c 204 § 8; 1980 c 149 § 1.]

Findings—1993 c 204: See note following RCW 35.92.390.

80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources—Consideration of water conservation goals. (1) 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.

(2) In establishing rates for water companies regulated by this chapter, the commission may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1991 c 347 § 23; 1980 c 149 § 2.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

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—Water companies, board of health standards. 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, quality, 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. Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure shall be prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.

In ordering improvements in the storage, distribution, or supply of water, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission in a timely fashion, the commission may request that the department petition the court to place the company in receivership. [1989 c 207 § 4; 1961 c 14 § 80.28.030. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

80.28.040 Commission may order improved service—Water companies, noncompliance, receivership. 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.

In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the court to place the company in receivership. [1989 c 207 § 5; 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. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. 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. [1989 c 152 § 1; 1961 c 14 § 80.28.060. Prior: 1911 c 117 § 28; RRS § 10364.]

80.28.065 Tariff schedule—Energy conservation—Payment by successive property owners—Notice—Rules. (1) Upon request by an electrical or gas company, the commission may approve a tariff schedule that contains rates or charges for energy conservation measures, services, or payments provided to individual property owners or customers. The tariff schedule shall require the electrical or gas company to enter into an agreement with the property owner or customer receiving services at the time the conservation measures, services, or payments are initially provided. The tariff schedule may allow for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made.

(2) The electrical or gas company shall record a notice of a payment obligation, containing a legal description, resulting from an agreement under this section with the county auditor or recording officer as provided in RCW 65.04.030.

(3) The commission may prescribe by rule other methods by which an electrical or gas company shall notify property owners or customers of any such payment obligation. [1993 c 245 § 2.]

Legislative findings—Intent—1993 c 245: "(1) The legislature finds that:

(a) The ability of utilities to acquire cost-effective conservation measures is instrumental in assuring that Washington citizens have reasonable energy rates and that utilities have adequate energy resources to meet future energy demands;

(b) Customers may be more willing to accept investments in energy efficiency and conservation if real and perceived impediments to property transactions are avoided;

(c) Potential purchasers of real property should be notified of any utility conservation charges at the earliest point possible in the sale.

(2) It is the intent of the legislature to encourage utilities to develop innovative approaches designed to promote energy efficiency and conservation that have limited rate impacts on utility customers. It is not the intent of the legislature to restrict the authority of the utilities and transportation commission to approve tariff schedules.

(3) It is also the intent of the legislature that utilities which establish conservation tariffs should undertake measures to assure that potential purchasers of property are aware of the existence of any conservation tariffs. Measures that may be considered include, but are not limited to:

(a) Recording a notice of a conservation tariff payment obligation, containing a legal description, with the county property records;

(b) Annually notifying customers who have entered agreements of the conservation tariff obligation;

(c) Working with the real estate industry to provide for disclosure of conservation tariff obligations in standardized listing agreements and earnest money agreements; and

(d) Working with title insurers to provide recorded conservation tariff obligations as an informational note to the preliminary commitment for policy of title insurance." [1993 c 245 § 1.]

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.]

80.28.074 Legislative declaration. The legislature declares it is the policy of the state to:

(1) Preserve affordable natural gas and electric services to the residents of the state;

(2) Maintain and advance the efficiency and availability of natural gas and electric services to the residents of the state of Washington;

(3) Ensure that customers pay only reasonable charges for natural gas and electric service;

(4) Permit flexible pricing of natural gas and electric services. [1988 c 166 § 1.]

80.28.075 Banded rates—Natural gas and electric services. Upon request by a natural gas company or an electrical company, the commission may approve a tariff that includes banded rates for any nonresidential natural gas or electric service that is subject to effective competition from energy suppliers not regulated by the utilities and transportation commission. "Banded rate" means a rate that has a minimum and maximum rate. Rates may be changed within the rate band upon such notice as the commission may order. [1988 c 166 § 2.]

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 preference 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 there-

with, 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 and low-income disabled 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, except that a water company shall not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70.116 RCW. [1990 c 132 § 5; 1961 c 14 § 80.28.110. Prior: 1911 c 117 § 33; RRS § 10369.]

Legislative findings—Severability—1990 c 132: See note following RCW 43.20.240.

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 reason-

able 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.]

80.28.185 Water companies within counties—Commission may regulate. The commission may develop and enter into an agreement with a county to carry out the regulatory functions of this chapter with regard to water companies located within the boundary of that county. The duration of the agreement, the duties to be performed, and the remuneration to be paid by the commission are subject to agreement by the commission and the county. [1989 c 207 § 6.]

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—Level of penalty—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. The level of such penalty shall be set by rule by the commission and shall not exceed the penalties specified in federal pipeline safety laws (49 U.S.C. 60101 et seq.) in effect on July 23, 1995. 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. [1995 c 247 § 1; 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.

(3) 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.

(4) 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. [1989 c 11 § 30; 1985 c 427 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

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.]

80.28.260 Adoption of policies to provide financial incentives for energy efficiency programs. (1) The commission shall adopt a policy allowing an incentive rate of return on investment (a) for payments made under RCW 19.27A.035 and (b) for programs that improve the efficiency of energy end use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The incentive rate of return on investments set forth in this subsection is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investments.

(2) The commission shall consider and may adopt a policy allowing an incentive rate of return on investment in additional programs to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.

(3) The commission shall consider and may adopt other policies to protect a company from a reduction of short-term earnings that may be a direct result of utility programs to increase the efficiency of energy use. These policies may include allowing a periodic rate adjustment for investments in end use efficiency or allowing changes in price structure designed to produce additional new revenue. [1996 c 186 § 520; 1990 c 2 § 9.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

80.28.270 Water companies—Extension, installation, or connection charges. The commission's jurisdiction over the rates, charges, practices, acts or services of any water company shall include any aspect of line extension, service installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine the fair, just, reasonable, and sufficient charge for such extension, installation, or connection. In any such proceeding in which there is no specified tariffed rate, the burden shall be on the company to prove that its proposed charges are fair, just, reasonable, and sufficient. [1991 c 101 § 2.]

80.28.275 Water companies—Assumption of substandard water system—Limited immunity from liability. A water company assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes

of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the water company has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 9.]

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

80.28.280 Compressed natural gas—Motor vehicle refueling stations—Public interest. The legislature finds that compressed natural gas offers significant potential to reduce vehicle emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas is to be widely used by the public. The legislature declares that the development of compressed natural gas refueling stations are in the public interest. Nothing in this section and RCW 80.28.290 is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another. [1991 c 199 § 216.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Clean fuel: RCW 70.120.210.

80.28.290 Compressed natural gas—Refueling stations—Identify barriers. The commission shall identify barriers to the development of refueling stations for vehicles operating on compressed natural gas, and shall develop policies to remove such barriers. In developing such policies, the commission shall consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations. [1991 c 199 § 217.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

80.28.300 Gas, electrical companies authorized to provide customers with landscaping information and to request voluntary donations for urban forestry. (1) Gas companies and electrical companies under this chapter may provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Gas companies and electrical companies under this chapter may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation. [1993 c 204 § 4.]

Findings—1993 c 204: See note following RCW 35.92.390.

80.28.303 Conservation service tariff—Contents of filing—Rate base—Duties of commission. (1) An electri-

cal, gas, or water company may file a conservation service tariff with the commission. The tariff shall provide:

(a) The terms and conditions upon which the company will offer the conservation measures and services specified in the tariff;

(b) The period of time during which the conservation measures and services will be offered; and

(c) The maximum amount of expenditures to be made during a specified time period by the company on conservation measures and services specified in the tariff.

(2) The commission has the same authority with respect to a proposed conservation service tariff as it has with regard to any other schedule or classification the effect of which is to change any rate or charge, including, without limitation, the power granted by RCW 80.04.130 to conduct a hearing concerning a proposed conservation service tariff and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of the tariff for a period not exceeding ten months from the time the tariff would otherwise go into effect.

(3) An electrical, gas, or water company may from time to time apply to the commission for a determination that specific expenditures may under its tariff constitute bondable conservation investment. A company may request this determination by the commission in separate proceedings for this purpose or in connection with a general rate case. The commission may designate the expenditures as bondable conservation investment as defined in RCW 80.28.005(1) if it finds that such designation is in the public interest.

(4) The commission shall include in rate base all bondable conservation investment. The commission shall approve rates for service by electrical, gas, and water companies at levels sufficient to recover all of the expenditures of the bondable conservation investment included in rate base and the costs of equity and debt capital associated therewith, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds. The rates so determined may be included in general rate schedules or may be expressed in one or more separate rate schedules. The commission shall not revalue bondable conservation investment for rate-making purposes, to determine that revenues required to recover bondable conservation investment and associated equity and debt capital costs are unjust, unreasonable, or in any way impair or reduce the value of conservation investment assets or that would impair the timing or the amount of revenues arising with respect to conservation investment assets that have been pledged to secure conservation bonds.

(5) Nothing in this chapter precludes the commission from adopting or continuing other conservation policies and programs intended to provide incentives for and to encourage utility investment in improving the efficiency of energy or water end use. However, the policies or programs shall not impair conservation investment assets. This chapter is not intended to be an exclusive or mandatory approach to conservation programs for electrical, gas, and water companies, and no such company is obligated to file conservation service tariffs under this chapter, to apply to the commission for a determination that conservation costs constitute bondable conservation investment within the meaning of this chapter, or to issue conservation bonds.

(6)(a) If a customer of an electrical, gas, or water company for whose benefit the company made expenditures for conservation measures or services ceases to be a customer of such company for one or more of the following reasons, the commission may require that the portion of such conservation expenditures that had been included in rate base but not theretofore recovered in the rates of such company be removed from the rate base of the company:

(i) The customer ceases to be a customer of the supplier of energy or water, and the customer repays to the company the portion of the conservation expenditures made for the benefit of such customer that has not theretofore been recovered in rates of the company; or

(ii) The company sells its property used to serve such customer and the customer ceases to be a customer of the company as a result of such action.

(b) An electrical, gas, or water company may include in a contract for a conservation measure or service, and the commission may by rule or order require to be included in such contracts, a provision requiring that, if the customer ceases to be a customer of that supplier of energy or water, the customer shall repay to the company the portion of the conservation expenditures made for the benefit of such customer that has not theretofore been recovered in rates of the company. [1994 c 268 § 2.]

80.28.306 Conservation bonds—Conservation investment assets as collateral—Priority of security interests—Transfers. (1) Electrical, gas, and water companies, or finance subsidiaries, may issue conservation bonds upon approval by the commission.

(2) Electrical, gas, and water companies, or finance subsidiaries may pledge conservation investment assets as collateral for conservation bonds by obtaining an order of the commission approving an issue of conservation bonds and providing for a security interest in conservation investment assets. A security interest in conservation investment assets is created and perfected only upon entry of an order by the commission approving a contract governing the granting of the security interest and the filing with the department of licensing of a UCC-1 financing statement, showing such pledgor as "debtor" and identifying such conservation investment assets and the bondable conservation investment associated therewith. The security interest is enforceable against the debtor and all third parties, subject to the rights of any third parties holding security interests in the conservation investment assets perfected in the manner described in this section, if value has been given by the purchasers of conservation bonds. An approved security interest in conservation investment assets is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated bondable conservation investment, whether or not such revenues have accrued. Upon such approval, the priority of such security interest shall be as set forth in the contract governing the conservation bonds. Conservation investment assets constitute property for the purposes of contracts securing conservation bonds whether or not the related revenues have accrued.

(3) The relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to conser-

vation investment assets with other funds of the debtor. The holders of conservation bonds shall have a perfected security interest in all cash and deposit accounts of the debtor in which revenues arising with respect to conservation investment assets pledged to such holders have been commingled with other funds, but such perfected security interest is limited to an amount not greater than the amount of such revenues received by the debtor within twelve months before (a) any default under the conservation bonds held by the holders or (b) the institution of insolvency proceedings by or against the debtor, less payments from such revenues to the holders during such twelve-month period. If an event of default occurs under an approved contract governing conservation bonds, the holders of conservation bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the security interest in the conservation investment assets securing the conservation bonds, subject to the rights of any third parties holding prior security interests in the conservation investment assets perfected in the manner provided in this section. Upon application by the holders of [or] their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the conservation investment assets pledged to such holders. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, and expenses arising under the contract governing the conservation bonds shall be remitted to the debtor electrical, gas, or water company or the debtor finance subsidiary.

(4) The granting, perfection, and enforcement of security interests in conservation investment assets to secure conservation bonds is governed by this chapter rather than by chapter 62A.9 RCW

(5) A transfer of conservation investment assets by an electrical, gas, or water company to a finance subsidiary, which such parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in an order issued by the commission and in connection with the issuance by such finance subsidiary of conservation bonds, shall be treated as a true sale, and not as a pledge or other financing, of such conservation investment assets. According the holders of conservation bonds a preferred right to revenues of the electrical, gas, or water company, or the provision by such company of other credit enhancement with respect to conservation bonds, does not impair or negate the characterization of any such transfer as a true sale.

(6) Any successor to an electrical, gas, or water company pursuant to any bankruptcy, reorganization, or other insolvency proceeding shall perform and satisfy all obligations of the company under an approved contract governing conservation bonds, in the same manner and to the same extent as such company before any such proceeding, including, without limitation, collecting and paying to the bondholders or their representatives revenues arising with respect to the conservation investment assets pledged to secure the conservation bonds. [1994 c 268 § 3.]

80.28.309 Costs as bondable conservation investment. (1) Costs incurred before June 9, 1994, by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of energy or water end use shall constitute bondable conservation investment for purposes of RCW 80.28.005, 80.28.303, 80.28.306, and this section, if:

(a) The commission has previously issued a rate order authorizing the inclusion of such costs in rate base; and

(b) The commission authorizes the issuance of conservation bonds secured by conservation investment assets associated with such costs.

(2) If costs incurred before June 9, 1994, by electrical, gas, or water companies with respect to energy or water conservation measures intended to improve the efficiency of energy or water end use have not previously been considered by the commission for inclusion in rate base, an electrical, gas, or water company may apply to the commission for approval of such costs. If the commission finds that the expenditures are a bondable conservation investment, the commission shall by order designate such expenditures as bondable conservation investment, which shall be subject to RCW 80.28.005, 80.28.303, 80.28.306, and this section. [1994 c 268 § 4.]

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.
80.32.070	Right of entry.
80.32.080	Duties of electrical companies exercising power of eminent domain.
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 distribut-

ing 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

Sections

80.36.005	Definition of "department."
80.36.010	Eminent domain.
80.36.020	Right of entry.
80.36.030	Extent of appropriation.
80.36.040	Use of road, street, and railroad right-of-way—When consent of city necessary.
80.36.050	Use of railroad right-of-way—Penalty for refusal by railroad.
80.36.060	Liability for wilful injury to telecommunications property.

80.36.070	Liability for negligent injury to property—Notice of underwater cable.
80.36.080	Rates, services, and facilities.
80.36.090	Service to be furnished on demand.
80.36.100	Tariff schedules to be filed and open to public.
80.36.110	Tariff changes—Statutory notice—Exception.
80.36.120	Joint rates, contracts, etc.
80.36.130	Published rates to be charged—Exceptions.
80.36.135	Alternative regulation of telecommunications companies.
80.36.140	Rates and services fixed by commission, when.
80.36.145	Formal investigation and fact-finding—Alternative to full adjudicative proceeding.
80.36.150	Contracts filed with commission.
80.36.160	Physical connections may be ordered, routing prescribed, and joint rates established.
80.36.170	Unreasonable preference prohibited.
80.36.180	Rate discrimination prohibited.
80.36.183	Discounted message toll rates prohibited—Availability of state-wide, averaged toll rates.
80.36.186	Pricing of or access to noncompetitive services—Unreasonable preference or advantage prohibited.
80.36.190	Long and short distance provision.
80.36.195	Telecommunications relay system—Long distance discount rates.
80.36.200	Transmission of messages of other lines.
80.36.210	Order of sending messages.
80.36.220	Duty to transmit messages—Penalty for refusal or neglect.
80.36.225	Pay telephones—Calls to operator without charge or coin insertion to be provided.
80.36.230	Exchange areas for telecommunications companies.
80.36.240	Exchange areas for telephone companies—Procedure to establish.
80.36.250	Commission may complain of interstate rates.
80.36.260	Betterments may be ordered.
80.36.270	Effect on existing contracts.
80.36.300	Policy declaration.
80.36.310	Classification as competitive telecommunications companies, services—Initiation of proceedings—Date for final order.
80.36.320	Classification as competitive telecommunications companies, services—Factors considered—Minimal regulation—Equal access—Reclassification.
80.36.330	Classification as competitive telecommunications companies, services—Effective competition defined—Prices and rates—Reclassification.
80.36.340	Banded rates.
80.36.350	Registration of new companies.
80.36.360	Exempted actions or transactions.
80.36.370	Certain services not regulated.
80.36.375	Personal wireless services—Siting microcells—Definitions.
80.36.380	Report.
80.36.390	Telephone solicitation.
80.36.400	Automatic dialing and announcing device—Commercial solicitation by.
80.36.410	Lifeline service—Legislative finding.
80.36.420	Washington telephone assistance program—Availability, components.
80.36.430	Washington telephone assistance program—Excise tax.
80.36.440	Washington telephone assistance program—Rules.
80.36.450	Washington telephone assistance program—Limitation.
80.36.460	Washington telephone assistance program—Deposit waivers, connection fee discounts.
80.36.470	Washington telephone assistance program—Eligibility.
80.36.475	Washington telephone assistance program—Report to legislature.
80.36.500	Information delivery services through exclusive number prefix or service access code.
80.36.510	Legislative finding.
80.36.520	Disclosure of alternate operator services.
80.36.522	Alternate operator service companies—Registration—Penalties.
80.36.524	Alternate operator service companies—Rules.
80.36.530	Violation of consumer protection act—Damages.
80.36.540	Telefacsimile messages—Unsolicited transmission—Penalties.
80.36.555	Enhanced 911 service—Residential service required.

80.36.560 Enhanced 911 service—Business service required.
 80.36.850 Extended area service defined.
 80.36.855 Extended area service program.
 80.36.860 Feasibility study—Report.
 80.36.900 Severability—1985 c 450.
 80.36.901 Legislative review of 1985 c 450—1989 c 101.

Arrest by telegraph, validity of telegraphic copy: RCW 10.31.060.

Bills and notes drawn by telegraph, preservation of original: RCW 5.52.040.

Divulging telegraph message: RCW 9.73.010.

Telegraph and telephone companies: State Constitution Art. 12 § 19.

Telegraph communications, generally: Chapter 5.52 RCW.

Use of slugs to operate coin telephones: RCW 9.26A.120.

80.36.005 Definition of "department." As used in this chapter, unless the context indicates otherwise, "department" means the department of social and health services. [1993 c 249 § 1.]

Effective date—1993 c 249: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 249 § 4.]

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 road, street, 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 right-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, 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, 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 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. [1989 c 101 § 9; 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, 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, 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. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission for good cause shown may allow changes in rates, charges, tolls, or rentals 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, 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. [1989 c 152 § 2; 1989 c 101 § 10; 1985 c 450 § 25; 1961 c 14 § 80.36.110. Prior: 1911 c 117 § 37; RRS § 10373.]

Reviser's note: This section was amended by 1989 c 101 § 10 and by 1989 c 152 § 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).

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. (1) Except as provided in RCW 80.04.130 and 80.36.150, 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.

(2) 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.

(3) The commission may accept a tariff that gives free or reduced rate services for a temporary period of time in order to promote the use of the services. [1992 c 68 § 2; 1989 c 101 § 11; 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.]

80.36.135 Alternative regulation of telecommunications companies. (1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject before July 23, 1989, to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

- (a) Reduce regulatory delay and costs;
- (b) Encourage innovation in services;
- (c) Promote efficiency;
- (d) Facilitate the broad dissemination of technological improvements to all classes of ratepayers;
- (e) Enhance the ability of telecommunications companies to respond to competition;
- (f) Ensure that telecommunications companies do not have the opportunity to exercise substantial market power absent effective competition or effective regulatory constraints; and
- (g) Provide fair, just, and reasonable rates for all ratepayers.

The commission shall make written findings of fact as to each of the above-stated policy goals in ruling on any proposed alternative form of regulation.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation. The commission shall review and may modify or reject the proposed plan. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission may approve the plan or modified plan and authorize its implementation, if it finds, after notice and hearing, that the plan or modified plan:

- (a) Is in the public interest;
- (b) Is necessary to respond to such changes in technology and the structure of the intrastate telecommunications industry as are in fact occurring;
- (c) Is better suited to achieving the policy goals set forth in RCW 80.36.300 and this section than the traditional rate of return, rate base regulation;
- (d) Ensures that ratepayers will benefit from any efficiency gains and cost savings arising out of the regulatory change and will afford ratepayers the opportunity to benefit from improvements in productivity due to technological change;
- (e) Will not result in a degradation of the quality or availability of efficient telecommunications services;
- (f) Will produce fair, just, and reasonable rates for telecommunications services; and
- (g) Will not unduly or unreasonably prejudice or disadvantage any particular customer class.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission. If a company elects to appeal to the

courts the final order of the commission authorizing an alternative form of regulation, it shall not change its election to proceed or not proceed after the appeal is concluded. The pendency of a petition by a company for judicial review of the final order shall not serve to extend the sixty-day period.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section: PROVIDED, That the commission may not grant the authority to price list services except as provided in RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it waive any statutory requirements or grants of legal rights to any person contained in this chapter and chapter 80.04 RCW as amended, except as otherwise expressly provided. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by any person, or upon its own motion, the commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (3) of this section can no longer be satisfied. The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of chapter 101, Laws of 1989: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint. [1995 c 110 § 5; 1989 c 101 § 1.]

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.]

80.36.145 Formal investigation and fact-finding—Alternative to full adjudicative proceeding. (1) The legislature declares that the availability of an alternative abbreviated formal procedure for use by the commission instead of a full adjudicative proceeding may in appropriate circumstances advance the public interest by reducing the time required by the commission for decision and the costs incurred by interested parties and ratepayers. Therefore, the commission is authorized to use formal investigation and fact-finding instead of an adjudicative proceeding under chapter 34.05 RCW when it determines that its use is in the public interest and that a full adjudicative hearing is not necessary to fully develop the facts relevant to the proceeding and the positions of the parties, including intervenors.

(2) The commission may use formal investigation and fact-finding instead of the hearing provided in the following circumstances:

(a) A complaint proceeding under RCW 80.04.110 with concurrence of the respondent when the commission is the complainant or with concurrence of the complainant and respondent when not the commission;

(b) A tariff suspension under RCW 80.04.130; or

(c) A competitive classification proceeding under RCW 80.36.320 and 80.36.330.

(3) In formal investigation and fact-finding the commission may limit the record to written submissions by the parties, including intervenors. The commission shall review the written submissions and, based thereon, shall enter appropriate findings of fact and conclusions of law and its order. When there is a reasonable expression of public interest in the issues under consideration, the commission shall hold at least one public hearing for the receipt of information from members of the public that are not formal intervenors in the proceeding and may elect to convert the proceeding to an adjudicative proceeding at any stage. The assignment of an agency employee or administrative law judge to preside at such public hearing shall not require the entry of an initial order.

(4) The commission shall adopt rules of practice and procedure including rules for discovery of information necessary for the use of formal investigation and fact-finding and for the filing of written submissions. The commission may provide by rule for a number of rounds of written comments: PROVIDED, That the party with the burden of proof shall always have the opportunity to file reply comments. [1989 c 101 § 3.]

80.36.150 Contracts filed with commission. (1) 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. The commission shall adopt rules that provide for the filing by telecommunications companies on the public record of the essential terms and conditions of

every contract for service. The commission shall not require that customer proprietary information contained in contracts be disclosed on the public record.

(2) The commission shall not treat contracts as tariffs or price lists. The commission may require noncompetitive service to be tariffed unless the company demonstrates that the use of a contract is in the public interest based upon a customer requirement or a competitive necessity for deviation from tariffed rates, terms and conditions, or that the contract is for a new service with limited demand.

(3) Contracts shall be for a stated time period and shall cover the costs for the service contracted for, as determined by commission rule or order. Contracts shall be enforceable by the contracting parties according to their terms, unless the contract has been rejected by the commission before its stated effective date as improper under the commission's rules and orders, or the requirements of this chapter. If the commission finds a contract to be below cost after it has gone into effect, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(4) Contracts executed and filed prior to July 23, 1989, are deemed lawful and enforceable by the contracting parties according to the contract terms. If the commission finds that any existing contract provides for rates that are below cost, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(5) If a contract covers competitive and noncompetitive services, the noncompetitive services shall be unbundled and priced separately from all other services and facilities in the contract. Such noncompetitive services shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms, and conditions. [1989 c 101 § 8; 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 preference 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. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330. [1989 c 101 § 4; 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, unduly or unreasonably 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. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 or 80.36.330. [1989 c 101 § 5; 1985 c 450 § 32; 1961 c 14 § 80.36.180. Prior: 1911 c 117 § 41; RRS § 10377.]

80.36.183 Discounted message toll rates prohibited—Availability of state-wide, averaged toll rates. Notwithstanding any other provision of this chapter, no telecommunications company shall offer a discounted message toll service based on volume that prohibits aggregation of volumes across all territory with respect to which that company functions as an interexchange carrier. The commission shall continue to have the authority to require state-wide, averaged toll rates to be made available by any telecommunications company subject to its jurisdiction. [1989 c 101 § 6.]

80.36.186 Pricing of or access to noncompetitive services—Unreasonable preference or advantage prohibited. Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. [1989 c 101 § 7.]

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.]

80.36.195 Telecommunications relay system—Long distance discount rates. Each telecommunications company providing intrastate interexchange voice transmission service shall offer discounts from otherwise applicable long distance rates for service used in conjunction with the state-wide relay service authorized under RCW 43.20A.725. Such long distance discounts shall be determined in relation to the additional time required to translate calls through relay operators. In the case of intrastate long distance services provided pursuant to tariff, the commission shall require the incorporation of such discounts. [1992 c 144 § 5.]

Legislative findings—Severability—1992 c 144: See notes following RCW 43.20A.720.

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. [1989 c 101 § 12; 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—

Date for final order. 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 for a determination of their classification. The commission shall enter its final order with respect to classification within ten months from the date of filing of a company's petition or the commission's motion. [1989 c 101 § 14; 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.

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest. [1989 c 101 § 15; 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.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest. [1989 c 101 § 16; 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.

A telecommunications company may also submit a petition for competitive classification under RCW 80.36.310 at the time it applies for registration. The commission may act on the registration application and the competitive classification petition at the same time. [1990 c 10 § 1; 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;

(6) Radio communications services provided by a regulated telecommunications company, except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company the commission may regulate the radio communication service of that company. [1990 c 118 § 1; 1985 c 450 § 9.]

80.36.375 Personal wireless services—Siting microcells—Definitions. (1) If a personal wireless service provider applies to site several microcells in a single geographical area:

(a) If one or more of the microcells are not exempt from the requirements of RCW 43.21C.030(2)(c), local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents required by chapter 43.21C RCW that will apply to all the microcells to be sited; and (ii) to render decisions under chapter 43.21C RCW regarding all the microcells in a single administrative proceeding; and

(b) Local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents for land use permits that will apply to all the microcells to be sited; and (ii) to render decisions

regarding land use permits for all the microcells in a single administrative proceeding.

(2) For the purposes of this section:

(a) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(b) "Microcell" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length. [1996 c 323 § 3.]

Findings—1996 c 323: See note following RCW 43.70.600.

80.36.380 Report. 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 nonprofit 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 nonprofit 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 device—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. (*Expires June 30, 1998.*) 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.]

***Reviser's note:** References to "lifeline service" were changed to "Washington telephone assistance program" by 1990 c 170.

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 § 3-10: "RCW 80.36.410 through 80.36.470 shall expire June 30, 1998, unless extended by the legislature." [1993 c 249 § 3; 1990 c 170 § 8; 1987 c 229 § 12.]

80.36.420 Washington telephone assistance program—Availability, components. (*Expires June 30, 1998.*) The Washington telephone assistance program shall be available to participants of department programs set forth in RCW 80.36.470. Assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent or more 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 service for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single telephone assistance rate for all local exchange companies operating in

the state of Washington. The telephone assistance 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 telephone assistance 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 telephone assistance 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 telephone assistance rate. Low-income senior citizens sixty years of age and older and other low-income persons identified by the department as medically needy shall, where single-party service is available, be provided with single-party service as the lowest available local exchange flat rate service.

(d) The cost of providing the 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 telephone assistance fund created by RCW 80.36.430. [1990 c 170 § 2; 1987 c 229 § 4.]

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.430 Washington telephone assistance program—Excise tax. (*Expires June 30, 1998.*) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in *RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies. [1990 c 170 § 3; 1987 c 229 § 5.]

*Reviser's note: "Telephone access line" is defined in RCW 82.14B.020. "Switched access lines" is not defined in RCW 82.14B.020.

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.440 Washington telephone assistance program—Rules. (*Expires June 30, 1998.*) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.470. [1990 c 170 § 4; 1987 c 229 § 6.]

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.450 Washington telephone assistance program—Limitation. (*Expires June 30, 1998.*) The Washington telephone assistance program shall be limited to one residential access line per eligible household. [1993 c 249 § 2; 1987 c 229 § 7.]

Effective date—1993 c 249: See note following RCW 80.36.005.

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts. (*Expires June 30, 1998.*) 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. Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose. The commission or other appropriate agency shall make timely application for any available federal funds. 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 telephone assistance fund. Eligible subscribers shall be allowed one waiver of a deposit and one discount on service connection fees per year. [1990 c 170 § 5; 1987 c 229 § 8.]

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.470 Washington telephone assistance program—Eligibility. (*Expires June 30, 1998.*) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility. [1990 c 170 § 6; 1987 c 229 § 9.]

Expiration date—1993 c 249; 1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.475 Washington telephone assistance program—Report to legislature. The department shall report to the energy and utilities committees of the house of representatives and the senate by December 1 of each year on the status of the Washington telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report shall also include a description of the geographical distribution of participants, the program's annual revenue and expenditures, and any recommendations for legislative action. [1990 c 170 § 7.]

80.36.500 Information delivery services through exclusive number prefix or service access code. (1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access to all information delivery services offered through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory. [1991 c 191 § 8; 1988 c 123 § 2.]

Legislative finding, intent—1988 c 123: "(1) The legislature finds that throughout the state there is widespread use of information delivery services, which are also known as information-access telephone services and commonly provided on a designated telephone number prefix. These services operate on a charge-per-call basis, providing revenue for both the information provider and the local exchange company. The marketing practices for these telephone services have at times been misleading to consumers and at other times specifically directed toward minors. The result has been placement of calls by individuals, particularly by children, who are uninformed about the charges that might apply. In addition, children may have secured access to obscene, indecent, and salacious material through these services. The legislature finds that these services can be blocked by certain local exchange companies at switching locations, and that devices exist which allow for blocking within a residence. Therefore, the legislature finds that residential telephone users in the state are entitled to the option of having their phones blocked from access to information delivery services.

(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [1988 c 123 § 1.]

Investigation and report by commission: "By October 1, 1988, the commission shall investigate and report to the committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [1988 c 123 § 3.]

Severability—1988 c 123: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 123 § 4.]

Information delivery services: Chapter 19.162 RCW.

80.36.510 Legislative finding. The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice. [1988 c 91 § 1.]

80.36.520 Disclosure of alternate operator services. The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones. [1988 c 91 § 2.]

80.36.522 Alternate operator service companies—Registration—Penalties. All alternate operator service companies providing services within the state shall register with the commission as a telecommunications company before providing alternate operator services. The commission may deny an application for registration of an alternate operator services company if, after a hearing, it finds that the services and charges to be offered by the company are not for the public convenience and advantage. The commission may suspend the registration of an alternate operator services company if, after a hearing, it finds that the company does not meet the service or disclosure requirements of the commission. Any alternate operator services company that provides service without being properly registered with the commission shall be subject to a penalty of not less than five hundred dollars and not more than one thousand dollars for each and every offense. In case of a continuing offense, every day's continuance shall be a separate offense. The penalty shall be recovered in an action as provided in RCW 80.04.400. [1990 c 247 § 2.]

80.36.524 Alternate operator service companies—Rules. The commission may adopt rules that provide for minimum service levels for telecommunications companies providing alternate operator services. The rules may provide a means for suspending the registration of a company providing alternate operator services if the company fails to meet minimum service levels or if the company fails to provide appropriate disclosure to consumers of the protection afforded under this chapter. [1990 c 247 § 3.]

80.36.530 Violation of consumer protection act—Damages. In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally

affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved. [1990 c 247 § 4; 1988 c 91 § 3.]

80.36.540 Telefacsimile messages—Unsolicited transmission—Penalties. (1) As used in this section, "telefacsimile message" means the transmittal of electronic signals over telephone lines for conversion into written text.

(2) No person, corporation, partnership, or association shall initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient.

(3)(a) Except as provided in (b) of this subsection, this section shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business relationship.

(b) A person shall not initiate an unsolicited telefacsimile message under the provisions of (a) of this subsection if the person knew or reasonably should have known that the recipient is a governmental entity.

(4) Notwithstanding subsection (3) of this section, it is unlawful to initiate any telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive telefacsimile messages from the initiator.

(5) The unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient is a matter affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. The transmission of unsolicited telefacsimile messages is not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. Damages to the recipient of telefacsimile messages in violation of this section are five hundred dollars or actual damages, whichever is greater.

(6) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating transmissions of telefacsimile messages. [1990 c 221 § 1.]

80.36.555 Enhanced 911 service—Residential service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any private shared telecommunications services provider that provides service to residential customers shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each residential unit in a format that is compatible with the existing or planned county enhanced 911 system. [1995 c 243 § 3.]

Findings—1995 c 243: "The legislature finds that citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to immediately determine the location of the emergency without the need of the caller to speak. The

legislature further finds that in some cases, calls made from telephones connected to private telephone systems may not be precisely located by the answerer, eliminating some of the benefit of enhanced 911, and that this condition could additionally imperil citizens calling from these locations in an emergency. The legislature also finds that until national standards have been developed to address this condition, information-forwarding requirements should be mandated for only those settings with the most risk, including schools, residences, and some business settings." [1995 c 243 § 1.]

Severability—1995 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." [1995 c 243 § 12.]

80.36.560 Enhanced 911 service—Business service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any commercial shared services provider of private shared telecommunications services for hire or resale to the general public to multiple unaffiliated business users from a single system shall assure that such a system is connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system. This section shall apply only to providers of service to businesses containing a physical area exceeding twenty-five thousand square feet, or businesses on more than one floor of a building, or businesses in multiple buildings. [1995 c 243 § 5.]

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

80.36.850 Extended area service defined. As used in RCW 80.36.855, "extended area service" means the ability to call from one exchange to another exchange without incurring a toll charge. [1989 c 282 § 2.]

Policy—Program limitations—Report to legislative committees—Program expiration—1989 c 282: See notes following RCW 80.36.855.

80.36.855 Extended area service program. Any business, resident, or community may petition for and shall receive extended area service within the service territory of the local exchange company that provides service to the petitioner under the following conditions:

(1) Any customer, business or residential, interested in obtaining extended area service in their community must collect and submit to the commission the signatures of a representative majority of affected customers in the community. A "representative majority" for purposes of this section consists of fifteen percent of the access lines in that community;

(2) After receipt of the signatures, the commission shall authorize a study to be conducted by the affected local exchange company in order to determine whether a community of interest exists for the implementation of extended area service. For purposes of this section a community of interest shall be found if the average number of calls per customer per month from the area petitioning for extended area service to the area to which extended area service will be implemented is at least five;

(3) If a community of interest exists, the commission shall then calculate any increased rate that would be applied to the area which would have extended area service granted to it. This rate shall be based on the charges to a rate group having the same or similar calling capability as set forth in the tariffs of the local exchange telecommunications company involved;

(4) The affected telecommunications company shall be given the opportunity to propose an alternative plan that might be priced differently and that plan shall be included in the poll of subscribers as an alternative under subsection (5) of this section;

(5) After determining the amount of any additional rate, the commission shall notify the subscribers who will be affected by the increased rate and conduct a poll of those subscribers. If a simple majority votes its approval the commission shall order extended area service; and

(6) Any extended area service program adopted pursuant to this section shall be considered experimental and not binding on the commission in subsequent extended area service proceedings. If an extended area service program adopted pursuant to this section results in a revenue deficiency for a local exchange company, the commission shall allocate the resulting revenue requirement in a manner which produces fair, just and reasonable rates for all classes of customers. [1989 c 282 § 3.]

Policy—1989 c 282: "Universal telephone service for the people of the state of Washington is a policy goal of the legislature and has been enacted previously into Washington law. Access to universal and affordable telephone service enhances the economic and social well-being of Washington citizens." [1989 c 282 § 1.]

Program limitations—Report to legislative committees—1989 c 282: "The pilot program specified in sections 2 and 3 of this act applies only to extended area service petitions which meet the conditions under section 3 of this act, and have been filed with the commission by January 1, 1989. Any petitions for extended area service filed after January 1, 1989, shall be addressed under terms and conditions determined by the commission. By December 1, 1990, the commission shall submit to the energy and utilities committees of the house of representatives and the senate a report on extended area service. The report shall include:

(1) The status of any experimental, pilot program which provides extended area service developed under this section, and whether such an experimental, pilot program approach should continue to be made available;

(2) The status of all extended area service petitions pending at the commission;

(3) Commission action on the recommendations of the local extended calling advisory committee; and

(4) Commission recommendations for any other legislation addressing the issue of extended area service." [1989 c 282 § 4.] Section 2 of this act is the enactment of RCW 80.36.850. Section 3 of this act is the enactment of RCW 80.36.855.

Program expiration—1989 c 282: "The extended area service program under sections 2 through 5 of this act shall expire on December 1, 1990, except for any extended area service obtained by any business residence or community and put in place under section 3 of this act." [1989 c 282 § 5.] Sections 2 through 5 of this act are the enactment of RCW 80.36.850, 80.36.855, the above note, and this section. Section 3 of this act is the enactment of RCW 80.36.855.

80.36.860 Feasibility study—Report. The utilities and transportation commission shall study the feasibility of the elimination, by January 1, 1992, of multiparty lines and mileage charges in all telephone exchanges throughout the state and the relationship between mileage charges and extended area service. The study shall include recommendations as to methods to equitably share the costs of any such program, any recommendations for legislative action, and an

analysis of technological changes which may alter the telecommunications network in the next decade. The utilities and transportation commission shall report the results of the study to the energy and utilities committees of the house of representatives and the senate by December 1, 1989. [1989 c 282 § 6.]

Policy—Program limitations—Report to legislative committees—Program expiration—1989 c 282: See notes following RCW 80.36.855.

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 of 1985 c 450—1989 c 101. The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the 1991-1993 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. [1989 c 101 § 18; 1985 c 450 § 44.]

Chapter 80.40

UNDERGROUND NATURAL GAS STORAGE ACT

Sections

80.40.010	Definitions.
80.40.020	Declaration concerning the public interest.
80.40.030	Eminent domain.
80.40.040	Eminent domain—Application to oil and gas conservation committee prerequisite to eminent domain—Procedure.
80.40.050	Rights of company using storage—Rights of owners of condemned land and interests therein.
80.40.060	Leases by commissioner of public lands.
80.40.070	Leases by county commissioners.
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.]

*Reviser's note: RCW 78.52.020 was repealed by 1994 sp.s. c 9 § 869, effective July 1, 1994.

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 ecology, 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 nonproductive 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 34.05 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. [1988 c 127 § 35; 1963 c 201 § 5.]

*Reviser's note: The duties of the oil and gas conservation committee were transferred to the department of natural resources by 1994 sp.s. c 9, effective July 1, 1994.

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.]

***Reviser's note:** The duties of the oil and gas conservation committee were transferred to the department of natural resources by 1994 sp.s. c 9, effective July 1, 1994.

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.
80.50.020	Definitions.
80.50.030	Energy facility site evaluation council—Created—Membership—Support.
80.50.040	Energy facility site evaluation council—Powers enumerated.
80.50.060	Energy facilities to which chapter applies—Applications for certification—Forms—Information.
80.50.071	Council to receive applications—Fees or charges for application processing or certification monitoring.
80.50.075	Expedited processing of applications.
80.50.080	Counsel for the environment.
80.50.090	Public hearings.
80.50.100	Recommendations to governor—Approval or rejection of certification—Reconsideration.
80.50.105	Transmission facilities for petroleum products—Recommendations to governor.
80.50.110	Chapter governs and supersedes other law or regulations—Preemption of regulation and certification by state.
80.50.120	Effect of certification.
80.50.130	Revocation or suspension of certification—Grounds.
80.50.140	Review.
80.50.150	Enforcement of compliance—Penalties.
80.50.160	Availability of information.
80.50.175	Study of potential sites—Fee—Disposition of payments.
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.
80.50.190	Disposition of receipts from applicants.
80.50.300	Unfinished nuclear power projects—Transfer of site restoration responsibilities—Water rights.
80.50.310	Council actions—Exemption from chapter 43.21C RCW.
80.50.900	Severability—1970 ex.s. c 45.
80.50.901	Severability—1974 ex.s. c 110.
80.50.902	Severability—1977 ex.s. c 371.
80.50.903	Severability—1996 c 4.
80.50.904	Effective date—1996 c 4.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.
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.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts. [1996 c 4 § 1; 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 liquified 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 the 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, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;

(b) Facilities which will have the capacity to receive liquified 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 liquified 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. [1995 c 69 § 1; 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—Support. (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 chairman is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The chairman or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from 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 fish and wildlife;
- (c) Department of health;
- (d) Military department;
- (e) Department of community, trade, and economic development;
- (f) Utilities and transportation commission;
- (g) Department of natural resources;
- (h) Department of agriculture;
- (i) 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. [1996 c 186 § 108. Prior: 1994 c 264 § 75; 1994 c 154 § 315; 1990 c 12 § 3; 1988 c 36 § 60; 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.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Effective date—1990 c 12: "This act shall take effect July 1, 1990." [1990 c 12 § 12.]

Severability—1986 c 266: See note following RCW 38.52.005.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Severability—Headings—Effective date—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

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 34.05 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 34.05 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; and

(13) To serve as an interagency coordinating body for energy-related issues. [1990 c 12 § 4; 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.]

Effective date—1990 c 12: See note following RCW 80.50.030.

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 an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section. [1989 c 175 § 172; 1977 ex.s. c 371 § 17.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, 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. [1989 c 175 § 173; 1970 ex.s. c 45 § 9.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 adjudicative proceeding 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. [1989 c 175 § 174; 1977 ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.105 Transmission facilities for petroleum products—Recommendations to governor. In making its recommendations to the governor under this chapter regarding an application that includes transmission facilities for petroleum products, the council shall give appropriate weight

to city or county facility siting standards adopted for the protection of sole source aquifers. [1991 c 200 § 1112.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

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 34.05 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) Review by the supreme court would likely be sought 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 34.05 RCW. [1988 c 202 § 62; 1981 c 64 § 3; 1977 ex.s. c 371 § 11; 1970 ex.s. c 45 § 14.]

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

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[(1)](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.]

80.50.300 Unfinished nuclear power projects—Transfer of site restoration responsibilities—Water rights. (1) This section applies only to unfinished nuclear power projects that are not located on federal property. If a certificate holder stops construction of a nuclear energy facility before completion, terminates the project or otherwise resolves not to complete construction, never introduces or stores fuel for the energy facility on the site, and never operates the energy facility as designed to produce energy, the certificate holder may contract, establish interlocal agreements, or use other formal means to effect the transfer of site restoration responsibilities, which may include economic development activities, to any political subdivision or subdivisions of the state composed of elected officials. The contracts, interlocal agreements, or other formal means of cooperation may include, but are not limited to provisions effecting the transfer or conveyance of interests in the site and energy facilities from the certificate holder to other political subdivisions of the state, including costs of maintenance and security, capital improvements, and demolition and salvage of the unused energy facilities and infrastructure.

(2) If a certificate holder transfers all or a portion of the site to a political subdivision or subdivisions of the state composed of elected officials and located in the same county as the site, the council shall amend the site certification agreement to release those portions of the site that are transferred pursuant to this section. Immediately upon release of all or a portion of the site pursuant to this section, all responsibilities for maintaining the public welfare, including but not limited to health and safety, are transferred to the political subdivision or subdivisions of the state.

(3) The legislature finds that ensuring water for site restoration including economic development, completed pursuant to this section can best be accomplished by a transfer of existing surface water rights, and that such a transfer is best accomplished administratively through procedures set forth in existing statutes and rules. However, if a transfer of water rights is not possible, the department of ecology shall, within six months of the transfer of the site or portion thereof pursuant to subsection (1) of this section, create a trust water right under chapter 90.42 RCW containing between ten and twenty cubic feet per second for the benefit of the appropriate political subdivision or subdivisions of the state. The trust water right shall be used in fulfilling site restoration responsibilities, including economic development. The trust water right shall be from existing valid water rights within the basin where the site is located. [1996 c 4 § 2.]

80.50.310 Council actions—Exemption from chapter 43.21C RCW. Council actions pursuant to the transfer of the site or portions of the site under RCW 80.50.300 are exempt from the provisions of chapter 43.21C RCW. [1996 c 4 § 3.]

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.]

80.50.903 Severability—1996 c 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 4 § 5.]

80.50.904 Effective date—1996 c 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 6, 1996]. [1996 c 4 § 6.]

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, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure. 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. [1995 c 69 § 2; 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 80.66

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.
- 81.36 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.
- 81.64 Street railways.
- 81.66 Transportation for persons with special needs.
- 81.68 Auto transportation companies.
- 81.70 Passenger charter carriers.
- 81.72 Taxicab companies.
- 81.75 Transportation centers.
- 81.77 Solid waste 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.
- 81.100 High occupancy vehicle systems.
- 81.104 High capacity transportation systems.
- 81.108 Low-level radioactive waste sites.
- 81.112 Regional transportation authorities.
- 81.900 Construction.

*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

- 81.04.010 Definitions.
- 81.04.020 Procedure before commission and courts.
- 81.04.030 Number of witnesses may be limited.
- 81.04.040 Witness fees and mileage.
- 81.04.050 Protection against self-incrimination.
- 81.04.060 Deposition—Service of process.
- 81.04.070 Inspection of books, papers, and documents.
- 81.04.075 Manner of serving papers.
- 81.04.080 Annual report.
- 81.04.090 Forms of records to be prescribed.
- 81.04.100 Production of out-of-state books and records.
- 81.04.110 Complaint—Hearing.
- 81.04.120 Hearing—Order—Record.
- 81.04.130 Suspension of tariff change.
- 81.04.140 Order requiring joint action.
- 81.04.150 Remunerative rate—No change without approval prohibited.
- 81.04.160 Rules and regulations.
- 81.04.170 Review of orders.
- 81.04.180 Supersedeas.
- 81.04.190 Appellate review.

- 81.04.200 Rehearing before commission.
- 81.04.210 Commission may change orders.
- 81.04.220 Reparations.
- 81.04.230 Overcharges—Refund.
- 81.04.235 Limitation of actions.
- 81.04.236 When cause of action deemed to accrue.
- 81.04.240 Action in court on reparations and overcharges.
- 81.04.250 Determination of rates.
- 81.04.260 Summary proceedings.
- 81.04.270 Merchandise accounts to be kept separate.
- 81.04.280 Purchase and sale of stock by employees.
- 81.04.290 Sale of stock to employees and patrons.
- 81.04.300 Budgets to be filed by companies—Supplementary budgets.
- 81.04.310 Commission's control over expenditures.
- 81.04.320 Budget rules and regulations.
- 81.04.330 Effect of unauthorized expenditure—Emergencies.
- 81.04.350 Depreciation and retirement accounts.
- 81.04.360 Excessive earnings to reserve fund.
- 81.04.380 Penalties—Violations by public service companies.
- 81.04.385 Penalties—Violations by officers, agents, and employees of public service companies and persons or entities acting as public service companies.
- 81.04.387 Penalties—Violations by other corporations.
- 81.04.390 Penalties—Violations by persons.
- 81.04.400 Actions to recover penalties—Disposition of fines, fees, penalties.
- 81.04.405 Additional penalties—Violations by public service companies and officers, agents, and employees.
- 81.04.410 Orders and rules conclusive.
- 81.04.420 Commission intervention where order or rule is involved.
- 81.04.430 Findings of department prima facie correct.
- 81.04.440 Companies liable for damages.
- 81.04.450 Certified copies of orders, rules, etc.—Evidentiary effect.
- 81.04.460 Commission to enforce public service laws—Employees as peace officers.
- 81.04.470 Right of action not released—Penalties cumulative.
- 81.04.490 Application to municipal utilities.
- 81.04.500 Duties of attorney general.
- 81.04.510 Engaging in business or operating without approval or authority—Procedure.
- 81.04.520 Rate regulation study.

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.

"Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

"Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

"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, commercial ferries, 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.

"Commercial ferry" 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. [1993 c 427 § 9; 1991 c 272 § 3; 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.]

Effective dates—1991 c 272: See RCW 81.108.901.

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 Deposition—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 report. 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 on such date as the commission specifies by rule, 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. [1989 c 107 § 2; 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 ser-

vice 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 Complaint—Hearing. 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 company or any person, persons, or entity acting as a public service company 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 companies or a person, persons, or entity acting as a public service company, (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 companies 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 company or companies 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 company 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. [1994 c 37 § 2; 1961 c 14 § 81.04.110. Prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Intent—1994 c 37: "It is the intent of the legislature to clarify that the utilities and transportation commission has the authority to make more efficient use of its resources, provide quicker resolution of complaints regarding transportation tariff matters, eliminate duplicative hearings on classification and violation matters, and to make certain that criminal proceedings involving alleged violations of transportation tariffs not be dismissed because of confusion regarding whether a defendant has received a classification by the commission." [1994 c 37 § 1.]

81.04.120 Hearing—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 change. 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, other than a solid waste collection company, for a period not exceeding seven months, and, if proposed by a solid waste collection company, 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. [1993 c 300 § 1; 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.]

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 rate—No 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.]

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 Appellate review. The commission, any public service company or any complainant may, after the entry of judgment in the superior court in any action of review, seek appellate review as in other cases. [1988 c 202 § 63; 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.

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

81.04.200 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 § 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. 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 evi-

dence 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.]

*Reviser's note: Chapter 81.34 RCW was repealed by 1991 c 49 § 1.

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. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, 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. [1988 c 202 § 64; 1971 c 81 § 143; 1961 c 14 § 81.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

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

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 Sale 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 supple-

mentary 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 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 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 and persons or entities acting as public service companies. Every officer, agent or employee of any public service company or any person, persons, or entity acting as a 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. [1994 c 37 § 3; 1961 c 14 § 81.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 81.04.390, part.]

Intent—1994 c 37: See note following RCW 81.04.110.

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. 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, every person or corporation violating the provisions of any cease and desist order issued pursuant to RCW 81.04.510, and every person or entity found in violation pursuant to a complaint under RCW 81.04.110, 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. [1994 c 37 § 4; 1973 c 115 § 2; 1963 c 59 § 3.]

Intent—1994 c 37: See note following RCW 81.04.110.

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 Right 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.]

81.04.520 Rate regulation study. The commission, together with the Hanford low-level radioactive waste disposal site operator and other state agencies and parties as necessary, shall study and assess the need for procedures that include, but are not limited to: Assuring that the operator's rates are fair, just, reasonable, and sufficient considering the value of the operator's leasehold and license interests, the unique nature of its business operations, and the operator's liability associated with the site and its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises; and for ensuring that the commission's costs of regulation are recovered when the federal low-level waste policy act amendment of 1985 results in the regional site being the exclusive site option for Northwest low-level waste compact generators, after January 1, 1993. The commission shall issue its report for such procedures, containing comments by the operator and other parties, to the legislature by December 1, 1990, for its consideration. If, following receipt of the study, the legislature authorizes the commission to regulate the operator's rates, such rates shall not take effect until January 1, 1993, when the regional site will be the exclusive site option for Northwest low-level waste compact generators. [1990 c 21 § 8.]

Low-level radioactive test sites: Chapter 81.100 RCW.

Chapter 81.08
SECURITIES

Sections

81.08.010	Definition.
81.08.012	"Evidence of indebtedness"—Limitation of term.
81.08.020	Control vested in state.
81.08.030	Authority to issue.
81.08.040	Prior to issuance—Filing required—Contents.
81.08.070	Fee schedule.
81.08.080	Capitalization of franchise or merger contract prohibited.
81.08.090	Accounting for disposition of proceeds.
81.08.100	Issuance made contrary to this chapter—Penalties.
81.08.110	Penalty against company.
81.08.120	Penalty against individual.
81.08.130	Assumption of obligation or liability—Compliance with filing requirements.
81.08.140	State not obligated.
81.08.150	Authority of commission—Not affected by requirements of this chapter.

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 Prior to issuance—Filing required—Contents. Any public service company that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

(1) A description of the purposes for which the issuance is made, including a certification by an officer authorized to do so that the proceeds from any such financing is for one or more of the purposes allowed by this chapter;

(2) A description of the proposed issuance including the terms of financing; and

(3) A statement as to why the transaction is in the public interest. [1994 c 251 § 8; 1961 c 14 § 81.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

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 franchise or merger contract 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 Issuance made contrary to this chapter—Penalties. If a public service company issues any stock, stock certificate, or other evidence of interest or ownership, bond, note, or other evidence of indebtedness, contrary to the provisions of this chapter, the company may be subject to penalty under RCW 81.08.110 and 81.08.120. [1994 c 251 § 9; 1961 c 14 § 81.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

81.08.110 Penalty against company. 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 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 allowed by this chapter 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. [1994 c 251 § 10; 1961 c 14 § 81.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

81.08.120 Penalty against individual. 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 contrary to the provisions of this chapter, or who 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 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 allowed by this chapter 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. [1994 c 251 § 11; 1961 c 14 § 81.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

81.08.130 Assumption of obligation or liability—Compliance with filing requirements. Any public service company that assumes 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, shall comply with the filing requirements of RCW 81.08.040. [1994 c 251 § 12; 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.]

81.08.150 Authority of commission—Not affected by requirements of this chapter. No action by a public service company in compliance with nor by the commission in conformance with the requirements of this chapter may in any way affect the authority of the commission over rates, service, accounts, valuations, estimates, or determinations of costs, or any matters whatsoever that may come before it. [1994 c 251 § 13.]

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 any 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.]

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).]

**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.

81.20.030 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).]

81.20.010 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.]

81.20.040 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).]

81.20.020 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

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—Statement filing.
- 81.24.030 Fees of every commercial ferry—Statement filing.
- 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.
- 81.24.075 Delinquent fee payments.

81.24.080 Penalty for failure to pay fees—Disposition of fees and penalties.

Corporations, annual license fees of public service companies: RCW 23B.01.570.

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. (1) 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 date specified by the commission for filing annual reports under RCW 81.04.080, 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. However, the fee shall in no case be less than one dollar. Any railroad association that qualifies as a not-for-profit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) 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. [1996 c 196 § 1; 1990 c 48 § 2; 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—Statement filing. 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 every commercial ferry—Statement filing. Every commercial ferry 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. [1993 c 427 § 10; 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.]

81.24.075 Delinquent fee payments. Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 2.]

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

- 81.28.010 Duties as to rates, services, and facilities.
- 81.28.020 Duty of carriers and shippers to expedite traffic.
- 81.28.030 Routing of freight—Connecting companies—Damages.
- 81.28.040 Tariff schedules to be filed with commission—Public schedules—Commission's powers as to schedules.
- 81.28.050 Tariff changes—Statutory notice—Exception.
- 81.28.060 Joint rates, contracts, etc.
- 81.28.080 Published rates to be charged—Exceptions.
- 81.28.180 Rate discrimination prohibited.
- 81.28.190 Unreasonable preferences prohibited.
- 81.28.200 Long and short haul.
- 81.28.210 Transportation at less than published rates—Rebating.
- 81.28.220 Action for treble damages.
- 81.28.230 Commission to fix just, reasonable, and compensatory rates.
- 81.28.240 Commission may order improved facilities and service.
- 81.28.250 Commission may complain of interstate rates.
- 81.28.260 Bicycles as baggage.
- 81.28.270 Limitation of action for collection of transportation charges.
- 81.28.280 Reports of wrecks, etc.
- 81.28.290 Investigation of accidents, wrecks.

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.]

*Reviser's note: RCW 81.34.070 and 81.34.110 were repealed by 1991 c 49 § 1.

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. In the case of a solid waste collection company, no such change may be made except after forty-five 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. [1993 c 300 § 2; 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.]

*Reviser's note: RCW 81.34.070 was repealed by 1991 c 49 § 1.

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.]

81.28.080 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.]

***Reviser's note:** Chapter 81.34 RCW was repealed by 1991 c 49 § 1.

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.]

***Reviser's note:** Chapter 81.34 RCW was repealed by 1991 c 49 § 1.

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.]

*Reviser's note: Chapter 81.34 RCW was repealed by 1991 c 49 § 1.

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 indirect-

ly, 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.]

*Reviser's note: Chapter 81.34 RCW was repealed by 1991 c 49 § 1.

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.

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. The liability of any common carrier subject to regulation by the commission for the loss of or damage to any baggage shall be set by the commission. The commission will review the amounts periodically and adjust the rate accordingly. [1991 c 21 § 1; 1961 c 14 § 81.29.050. Prior: 1945 c 209 § 1; Rem. Supp. 1945 § 10495-1. Formerly RCW 81.32.360.]

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 Line or canal 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 ditches and canals.

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 berms 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 Line or canal 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, construct-

ed 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 ditches and canals. 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

- 81.40.010 Full train crews—Passenger—Safety review.
- 81.40.030 Penalty—Exceptions from requirements—Enforcement.
- 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.
- 81.40.070 Penalty.
- 81.40.080 Employee shelters.
- 81.40.090 Penalty.
- 81.40.095 Rules and regulations—Railroad employees—Sanitation, shelter.
- 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—Safety review. No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from staffing its passenger trains in accordance with collective bargaining agreements or any national or other applicable settlement of train crew size. In the absence of a collective bargaining agreement or any national or other applicable settlement of train crew size, any common carrier railroad operating a passenger train with a crew of less than two members shall be subject to a safety review by the Washington utilities and transportation commission, which, as to staffing, may issue an order requiring as many as two crew members. [1992 c 102 § 1; 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

Sections

- 81.44.010 Commission may order improved facilities.
- 81.44.020 Correction of unsafe or defective conditions—Failure to have walkways and handrails as unsafe or defective condition, when.
- 81.44.031 Safety appliances—Locomotives operated on class 1 railroads.
- 81.44.032 Penalties for violating RCW 81.44.031 or tampering with locomotive speedometer lock or recording tape.
- 81.44.040 Safety appliances—Cars—Street cars.
- 81.44.050 Power of commission as to appliances.
- 81.44.060 Penalty.
- 81.44.065 Devolution of powers and duties relative to safety of railroads.
- 81.44.070 Duties of inspector of safety appliances.
- 81.44.085 First aid kits and drinking water—Penalty.
- 81.44.091 Caboose—Size—Equipment—Application.
- 81.44.092 Caboose—Minimum length—Construction—Insulation—Cupola.
- 81.44.093 Caboose—Trucks, riding qualities, wheels—Draft gears, minimum travel, minimum capacity.
- 81.44.094 Caboose—Electric lighting—Markers.
- 81.44.095 Caboose—Glass, glazing materials of safety glass type.
- 81.44.096 Caboose—Stanchions, grab handles, or bars, installation—Edges and protrusions rounded—Seat backs, standard.
- 81.44.097 Caboose—Drinking water facilities.
- 81.44.0971 Caboose—Facilities for washing hands and face.
- 81.44.0972 Caboose—Fire extinguisher—Type, location, and maintenance.
- 81.44.098 Caboose—No violation when move in service if correction made at first available point—Temporary exemption, procedure, limitations.
- 81.44.0981 Caboose—Register for report of failures—Regulations for use of.
- 81.44.0982 Caboose—Compliance, when—Standard for compliance.
- 81.44.099 Caboose—Regulation and enforcement—Regulations for.
- 81.44.100 Penalty.
- 81.44.101 Track motor cars—Windshield and canopy required.
- 81.44.102 Track motor cars—Absence of windshield or canopy unlawful.
- 81.44.103 Track motor cars—Head and tail lights required.
- 81.44.104 Track motor cars—Absence of lights unlawful.
- 81.44.105 Track motor cars—Penalty for violation.
- 81.44.110 Equipment is part of cars—Tare weight.
- 81.44.120 Reimbursement of shipper for supplying equipment.
- 81.44.130 Safeguarding frogs, switches, and guard rails.

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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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 Cabooes—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.]

Chapter 81.48

RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

Sections

- 81.48.010 Failure to ring bell—Penalty—Exception.
- 81.48.015 Limiting or prohibiting the sounding of locomotive horns—Supplemental safety measures—Notice.
- 81.48.020 Obstructing or delaying train—Penalty.
- 81.48.030 Speed within cities and towns 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—Exception. 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

in counties that enact ordinances applying only to crossings equipped with supplemental safety measures as provided in RCW 81.48.015), 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.

This section shall not apply to an engineer operating a locomotive within yard limits or when on track, which is not main line track, where crossing speed is restricted by published special instruction or bulletin to ten miles per hour or less. [1995 c 315 § 1; 1961 c 14 § 81.48.010. Prior: 1909 c 249 § 276; RRS § 2528.]

81.48.015 Limiting or prohibiting the sounding of locomotive horns—Supplemental safety measures—

Notice. (1) The legislature hereby authorizes cities and counties to enact ordinances limiting or prohibiting the sounding of locomotive horns, provided the ordinance applies only at crossings equipped with supplemental safety measures. A supplemental safety measure is a safety device defined in P.L. 103-440, section 20153(a)(3), as that law existed on November 2, 1994. A supplemental safety measure that prevents careless movement over the crossing (e.g., as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in a particular direction of travel), shall be deemed to conform to those standards required under P.L. 103-440 unless specifically rejected by emergency order issued by the United States secretary of the department of transportation.

(2) Prior to enacting the ordinance, the cities and counties shall provide written notification to the railroad companies affected by the proposed ordinance, and to the state utilities and transportation commission, for the purpose of providing an opportunity to comment on the proposed ordinance.

(3) Nothing in this section shall be construed as limiting the state's power, guaranteed by the tenth amendment to the Constitution of the United States, to enact laws necessary for the health, safety, or welfare of the people of the state of Washington. [1995 c 315 § 2.]

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 towns and at grade crossings may be regulated. The right to fix and regulate the speed of railway trains within the limits of any city or town other than a first class city, 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. [1994 c 81 § 83; 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, the commission shall make

and issue an order fixing and regulating the speed of railway trains within the limits of cities and towns other than first class cities. 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. [1994 c 81 § 84; 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.

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 connec-

tions 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 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. 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

Sections

- 81.53.010 Definitions.
- 81.53.020 Grade separation required where practicable.
- 81.53.030 Petition for crossing—Hearing—Order.
- 81.53.040 Supplemental hearing—Change of route.
- 81.53.050 Requirements of order on change of route.
- 81.53.060 Petition for alteration of crossing—Closure of grade crossing without hearing.
- 81.53.070 Hearing.
- 81.53.080 Restrictions on structures, railway equipment, in proximity of crossings—Minimum clearance for under-crossings.
- 81.53.090 Duty to maintain crossings.
- 81.53.091 Underpasses, overpasses constructed with aid of federal funds—Apportionment of maintenance cost between railroad and state.
- 81.53.100 Cost when railroad crosses highway.
- 81.53.110 Cost when highway crosses railroad.
- 81.53.120 Cost when railroad crosses railroad.
- 81.53.130 Apportionment of cost.
- 81.53.140 Time for performance.
- 81.53.150 Practice and procedure.
- 81.53.160 Service of process.
- 81.53.170 Judicial review.
- 81.53.180 Eminent domain.
- 81.53.190 Abatement of illegal crossings.
- 81.53.200 Mandamus to compel performance.
- 81.53.210 Penalty.
- 81.53.220 Obstructions in highways.
- 81.53.230 No new right of action conferred.
- 81.53.240 Scope of chapter.
- 81.53.250 Employment of experts.
- 81.53.261 Crossing signals, warning devices—Petition, motion—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal.
- 81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs.
- 81.53.275 Crossing signals, warning devices—Apportionment when funds not available from grade crossing protective fund.
- 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.
- 81.53.291 Crossing signals, warning devices—Operational scope—Election by first class cities—Procedure.
- 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.
- 81.53.400 Traffic control devices during construction, repair, etc. of crossing or overpass—Required.
- 81.53.410 Traffic control devices during construction, repair, etc. of crossing or overpass—Standards and conditions.
- 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.

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 cross-

ing 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 seek review of 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. [1988 c 202 § 65; 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.]

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

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 Judicial review. 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. Appellate review of the judgment of the superior court may be sought in like manner as provided in said utilities and transportation commission law for review by the supreme court or the court of appeals. [1988 c 202 § 66; 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.]

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

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—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 installa-

tion 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 34.05 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 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. [1991 c 46 § 1; 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 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—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 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 thousand dollars per animal. [1994 c 261 § 19; 1961 c 14 § 81.56.120. Prior: 1893 c 27 § 4; RRS § 10494.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

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—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.
81.60.040	Duties.
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. 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. 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 a state correctional facility for not more than twenty-five years.

[Title 81 RCW—page 48]

[1992 c 7 § 60; 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 willfully 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 a state correctional facility for not more than five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [1992 c 7 § 61; 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.
- 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. 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 81.64 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	"Competent" 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 "Competent" 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 SEC-

TION: 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 PERSONS WITH SPECIAL NEEDS

(Formerly: 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.

81.66.010 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 persons with special transportation needs.

(4) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation. [1996 c 244 § 1; 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.

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) "Public highway" means every street, road, or highway in this state.

(5) 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. [1989 c 163 § 1; 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" 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 certificated under this chapter. [1989 c 163 § 2; 1984 c 166 § 2.]

***Reviser's note:** RCW 46.74.010 was amended by 1996 c 244 § 2 changing the term "ride sharing for the elderly and the handicapped" to "ride sharing for persons with special transportation needs."

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 for compensation on any public highway in this state, except in accordance with the provisions of this chapter. [1989 c 163 § 3; 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 in this state as provided in this section. Under this authority, it shall for each auto transportation 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. [1989 c 163 § 4; 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, for transporting for compensation persons and baggage, mail, and express on the vehicles of auto transportation 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. [1989 c 163 § 5; 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

Sections

- 81.70.010 Business affected with the public interest—Declaration of purpose.
- 81.70.020 Definitions.
- 81.70.030 Exclusions.
- 81.70.220 Certificate or registration required.

- 81.70.230 Certificates—Application, issuance, safety fitness, financial responsibility.
- 81.70.240 Certificates—Transfer restricted.
- 81.70.250 Certificates—Grounds for cancellation, etc.
- 81.70.260 Unlawful operation after certificate or registration canceled, etc.
- 81.70.270 Scope of regulation.
- 81.70.280 Insurance or bond for liability and property damage.
- 81.70.290 Self-insurers.
- 81.70.300 Authority of commission and courts.
- 81.70.310 Application of Title 81 RCW.
- 81.70.320 Fees—Amounts, deposit.
- 81.70.330 Vehicle identification.
- 81.70.340 Interstate or foreign carriers.
- 81.70.350 Annual regulatory fee—Delinquent fee payments.

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 a group of persons, who, pursuant to a common purpose and under a single contract, have acquired the use of a motor bus to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.
- (6) Subject to the exclusion of RCW 81.70.030, "excursion service carrier" means every person engaged in the transportation of 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, 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. Com-

pensation for the transportation offered or afforded shall be computed, charged, or assessed by the excursion service company on an individual fare basis. [1989 c 163 § 6; 1988 c 30 § 1; 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; or
- (5) Limousine charter party carriers of passengers under *chapter 81.90 RCW. [1989 c 283 § 17; 1965 c 150 § 4.]

*Reviser's note: Chapter 81.90 RCW was repealed by 1996 c 87 § 23.

81.70.220 Certificate or registration required. No person may engage in the business of a charter party carrier or excursion service carrier of persons over any public highway without first having obtained a certificate from the commission to do so or having registered as an interstate carrier. [1989 c 163 § 7; 1988 c 30 § 2.]

81.70.230 Certificates—Application, issuance, safety fitness, financial responsibility. (1) Applications for certificates shall be made to the commission in writing, verified under oath, and shall be in such form and contain such information as the commission by regulation may require. Every such application shall be accompanied by a fee as the commission may prescribe by rule.

(2) A certificate shall be issued to any qualified applicant authorizing, in whole or in part, the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and to conform to the provisions of this chapter and the rules and regulations of the commission.

(3) Before a certificate is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter. [1988 c 30 § 3.]

81.70.240 Certificates—Transfer restricted. No certificate issued under this chapter or rights to conduct services under it may be leased, assigned, or otherwise transferred or encumbered, unless authorized by the commission. [1988 c 30 § 4.]

81.70.250 Certificates—Grounds for cancellation, etc. The commission may cancel, revoke, or suspend any certificate issued under this chapter on any of the following grounds:

- (1) The violation of any of the provisions of this chapter;
- (2) The violation of an order, decision, rule, regulation, or requirement established by the commission pursuant to this chapter;

(3) Failure of a charter party carrier or excursion service carrier of passengers to pay a fee imposed on the carrier within the time required by law;

(4) Failure of a charter party carrier or excursion service carrier to maintain required insurance coverage in full force and effect; or

(5) Failure of the certificate holder to operate and perform reasonable service. [1989 c 163 § 8; 1988 c 30 § 5.]

81.70.260 Unlawful operation after certificate or registration canceled, etc. After the cancellation or revocation of a certificate or interstate registration or during the period of its suspension, it is unlawful for a charter party carrier or excursion service carrier of passengers to conduct any operations as such a carrier. [1989 c 163 § 9; 1988 c 30 § 6.]

81.70.270 Scope of regulation. It is the duty of the commission to regulate charter party carriers and excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations. The commission shall establish such rules and regulations and require such reports as are necessary to carry out the provisions of this chapter. [1989 c 163 § 10; 1988 c 30 § 7.]

81.70.280 Insurance or bond for liability and property damage. (1) In granting certificates under this chapter, the commission shall require charter party carriers and excursion service carriers of passengers to procure and continue in effect during the life of the certificate, 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 following amounts:

(a) Not less than one hundred thousand dollars for any recovery for personal injury by one person; and

(b) Not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less; and

(c) Not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all receiving personal injury by reason of at least one act of negligence; and

(d) Not less than fifty thousand dollars for damage to property of any person other than the insured.

(2) The commission shall fix the amount of the insurance policy or policies or security deposit giving 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 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 effect and a failure so to do is cause for revocation of the certificate. [1989 c 163 § 11; 1988 c 30 § 8.]

81.70.290 Self-insurers. A charter party carrier or excursion service carrier of passengers authorized to trans-

port 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 United States interstate commerce act applicable to self-insurance by motor carriers is exempt from RCW 81.70.280 relating to the carrying or filing of insurance policies or bonds in connection with such operations as long as such qualification remains effective.

The commission may require proof of the existence and continuation of qualification with the interstate commerce commission to be made by affidavit of the charter party carrier or excursion service carrier in a form the commission may prescribe. [1989 c 163 § 12; 1988 c 30 § 9.]

81.70.300 Authority of commission and courts. 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 by it, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, petitions for writs of review filed with the superior court, appeals or mandates filed with the supreme court or the court of appeals of this state, and may be considered and disposed of by said courts in a manner, under the conditions, subject to the limitations, and with the effect specified in this chapter. [1988 c 30 § 10.]

81.70.310 Application of Title 81 RCW. All applicable provisions of this title relating to procedure, powers of the commission, and penalties shall apply to the operation and regulation of persons under this chapter, except as those provisions may conflict with the provisions of this chapter and rules and regulations issued thereunder by the commission. [1988 c 30 § 11.]

81.70.320 Fees—Amounts, deposit. (1) An application for a certificate or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate, shall be accompanied by such filing fees as the commission may prescribe by rule, however the fee shall not exceed two hundred dollars.

(2) All fees paid to the commission under this chapter shall be deposited in the state treasury to the credit of the public service revolving fund.

(3) It is the intent of the legislature that all fees collected under this chapter shall reasonably approximate the cost of supervising and regulating charter party carriers and excursion service carriers subject thereto, and to that end the commission is authorized to decrease the schedule of fees provided for in RCW 81.70.350 by general order entered before November 1 of any year in which the commission determines that the moneys then in the charter party carrier and excursion service 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 succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees previously reduced should be increased, such increase, not in any event to exceed the schedule set forth in this chapter, may be effected by a similar general

order entered before November 1 of any calendar year. [1989 c 163 § 13; 1988 c 30 § 12.]

81.70.330 Vehicle identification. It is unlawful for a charter party carrier or excursion service carrier to operate a motor bus upon the highways of this state unless there is firmly affixed to the vehicle on both sides thereof, the name of the carrier and the certificate or permit number of such carrier. The characters composing such identification shall be of sufficient size to be clearly distinguishable at a distance of at least fifty feet from the vehicle. [1989 c 163 § 14; 1988 c 30 § 13.]

81.70.340 Interstate or foreign carriers. It is unlawful for a charter party carrier or excursion service carrier of passengers engaged in interstate or foreign commerce to use any of the public highways of this state for the transportation of passengers in interstate or foreign commerce, unless such carrier has identified its vehicles and registered its interstate or foreign operations with the commission. Interstate and foreign carriers possessing operating authority issued by the interstate commerce commission shall register such authority pursuant to Public Law 89-170, as amended, and the regulations of the interstate commerce commission adopted thereunder. Interstate and foreign charter party carriers and excursion service carriers of passengers exempt from regulation by the interstate commerce commission shall register their interstate operations under regulations adopted by the commission, which shall, to the maximum extent practical, conform to the regulations promulgated by the interstate commerce commission under Public Law 89-170, as amended. All other provisions of this chapter shall be applicable to motor carriers of passengers engaged in interstate or foreign commerce insofar as the same are not prohibited under the Constitution of the United States or federal statute. [1989 c 163 § 15; 1988 c 30 § 14.]

81.70.350 Annual regulatory fee—Delinquent fee payments. (1) The commission shall collect from each charter party carrier and excursion service carrier holding a certificate issued pursuant to this chapter and from each interstate or foreign carrier subject to this chapter an annual regulatory fee, to be established by the commission but which in total shall not exceed the cost of supervising and regulating such carriers, for each bus used by such carrier.

(2) All fees prescribed by this section shall be due and payable on or before December 31 of each year, to cover the ensuing year beginning February 1.

(3) Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 3; 1989 c 163 § 16; 1988 c 30 § 15.]

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 that 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

SOLID WASTE COLLECTION COMPANIES

(Formerly: 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.
- 81.77.030 Supervision and regulation by commission.
- 81.77.040 Certificate of convenience and necessity required—
Procedure when applicant requests certificate for existing service area.
- 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 solid waste collection companies.
- 81.77.110 Temporary certificates.
- 81.77.120 Service to unincorporated areas of counties.
- 81.77.130 Application of chapter to collection or transportation of source separated recyclable materials.
- 81.77.140 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
- 81.77.160 Pass-through rates—Rules.
- 81.77.170 Fees, charges, or taxes—Normal operating expense.
- 81.77.180 Recyclable materials collection—Processing and marketing.
- 81.77.190 Curbside recycling—Reduced rate.
- 81.77.900 Severability—1989 c 431.

Unlawful diversion of recyclable material: RCW 70.95.235.

81.77.010 Definitions. As used in this chapter:

- (1) "Motor vehicle" means any truck, trailer, semitrailer, tractor or any self-propelled or motor driven vehicle used upon any public highway of this state for the purpose of transporting solid waste, 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 solid waste, 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 solid waste by motor vehicle for compensation;
- (5) "Private carrier" means a person who, in his own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by him in good faith: PROVIDED, That a person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste shall not constitute a private carrier;
- (6) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any solid waste 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) "Solid waste collection company" means every person or his lessees, receivers, or trustees, owning, controlling, operating or managing vehicles used in the business of transporting solid waste 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;

(8) Solid waste collection does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, nor collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80 RCW; and

(9) "Solid waste" means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences. [1989 c 431 § 17; 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. No person, his lessees, receivers, or trustees, shall engage in the business of operating as a solid waste 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 solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste. [1989 c 431 § 18; 1961 c 295 § 3.]

81.77.030 Supervision and regulation by commission. The commission shall supervise and regulate every solid waste 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 requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and

necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

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 solid waste 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. [1989 c 431 § 20; 1987 c 239 § 1; 1965 ex.s. c 105 § 1; 1961 c 295 § 4.]

81.77.040 Certificate of convenience and necessity required—Procedure when applicant requests certificate for existing service area. No solid waste collection company shall hereafter operate for the hauling of solid waste 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 solid waste 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 solid waste 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 solid waste 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.

Except as provided in *RCW 81.77.150, 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 solid waste 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 solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any solid waste 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 solid waste 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.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter. [1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.]

*Reviser's note: RCW 81.77.150 expired June 30, 1991.

81.77.050 Filing fees. Any application for a certificate issued under this chapter or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate issued under this chapter 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. [1989 c 431 § 22; 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 solid waste 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 solid waste 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. [1989 c 431 § 23; 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 solid waste 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 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 solid waste 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. [1989 c 431 § 24; 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 solid waste 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 solid waste collection services are provided to all areas of the state, the commission, in accordance with this chapter, shall regulate all solid waste collection companies conducting business in the state. [1989 c 431 § 25; 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 solid waste 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 solid waste 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. [1989 c 431 § 26; 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.]

81.77.130 Application of chapter to collection or transportation of source separated recyclable materials. The provisions of chapter 81.77 RCW shall not apply to the collection or transportation of source separated recyclable materials from residences under a contract with any county, city, or town, nor to any city or town which itself undertakes the collection and transportation of source separated recyclable materials from residences. [1989 c 431 § 19.]

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

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 31.]

81.77.160 Pass-through rates—Rules. The commission, in fixing and altering collection rates charged by every solid waste collection company under this section, shall include in the base for the collection rates:

(1) All charges for the disposal of solid waste at the facility or facilities that the solid waste collection company is required to use under a local comprehensive solid waste management plan or ordinance designating disposal sites; and

(2) All known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan.

If a solid waste collection company files a tariff to recover the costs specified under this section, and the commission suspends the tariff, the portion of the tariff

covering costs specified in this section shall be placed in effect by the commission at the request of the company on an interim basis as of the originally filed effective date, subject to refund, pending the commission's final order. The commission may adopt rules to implement this section. [1989 c 431 § 30.]

Section captions not law—1989 c 431: See RCW 70.95.902.

81.77.170 Fees, charges, or taxes—Normal operating expense. For rate-making purposes, a fee, charge, or tax on the disposal of solid waste shall be considered a normal operating expense of the solid waste collection company. [1989 c 431 § 36.]

Section captions not law—1989 c 431: See RCW 70.95.902.

81.77.180 Recyclable materials collection—Processing and marketing. (1) A solid waste collection company collecting recyclable materials from residences shall utilize one or more private recycling businesses when arranging for the processing and marketing of such materials, if the following conditions are met:

(a) A recycling business is located within the county at the time the collection program commences or at any time that the solid waste collection company changes its existing processor;

(b) A local private recycling business is capable and competent to provide the processing and marketing service; and

(c) A local private recycling business offers to pay a price for the recyclable materials which is equal to or greater than the price offered by out-of-county private recyclers, or proposes a charge for the processing and marketing service which is equal to or less than the charge for the service available from an out-of-county private recycler.

(2) This section shall not apply to:

(a) Cities or towns who exercise their authority under RCW 81.77.130 to provide residential curbside collection of recyclable materials;

(b) A solid waste collection company that is directed by a city, town, or county to utilize a publicly owned recyclable processing facility located within such city, town, or county; or

(c) Counties which exercise their authority under RCW 36.58.040 to contract for the residential curbside collection of source separated recyclables.

This section shall not apply to programs for the collection of source separated recyclable materials where rates to implement the programs have been filed with the commission prior to May 21, 1991.

(3) For the purposes of this section, "private recycling business" means any private for-profit or private not-for-profit firm that engages in the processing and marketing of recyclable materials.

(4) This section is not enforceable by complaint filed with the commission. [1991 c 319 § 403.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

81.77.190 Curbside recycling—Reduced rate. (1) If the commission authorizes a surcharge or reduced rate incentive based on a customer's participation in a company's

curbside residential recycling program, customers participating in any other noncurbside recycling program approved by the jurisdiction shall be eligible for such incentives.

(2) For the purpose of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. It does not include any residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 406.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

81.77.900 Severability—1989 c 431. See RCW 70.95.901.

Chapter 81.80

MOTOR FREIGHT CARRIERS

Sections

81.80.010	Definitions.
81.80.020	Declaration of policy.
81.80.030	Hidden transportation charges.
81.80.040	Exempt vehicles.
81.80.045	Exemption—Freight consolidators.
81.80.050	Compliance required.
81.80.060	Combination of services.
81.80.070	Grant or denial of permit.
81.80.080	Application for permit.
81.80.090	Form of application—Filing fees.
81.80.100	Form and contents of permit.
81.80.110	Limitation on renewal of application.
81.80.115	Fees imposed under this chapter—Procedure for contesting—Rules.
81.80.120	Classification of carriers.
81.80.130	Regulatory power of commission over common carriers.
81.80.132	Common carriers—Estimate of charges for household goods—Penalty.
81.80.140	Regulatory power over contract carriers.
81.80.150	Tariffs to be compiled and sold by commission.
81.80.170	Temporary permits.
81.80.175	Permits for farm to market hauling.
81.80.190	Insurance or deposit of security.
81.80.195	Liability insurance requirements exclusive.
81.80.200	Conditions may be attached to permits.
81.80.211	Hours of operators—Rules and regulations.
81.80.220	Tariff rates must be charged.
81.80.230	Penalty for rebating—Procedures for collection.
81.80.240	Joint through rates.
81.80.250	Bond to protect shippers and consignees.
81.80.260	Operation in more than one class.
81.80.270	Permits—Transfer—Assignment—Acquisition of carrier holding permit—Commission approval—Duties on cessation of operation.
81.80.272	Transfer of decedent's interest—Temporary continuance of operations.
81.80.280	Cancellation of permits.
81.80.290	Rules and regulations.
81.80.301	Registration of motor carriers doing business in state—Identification number—Receipt carried in cab—Fees.
81.80.305	Markings required—Exemptions.
81.80.312	Interchange of trailers, semitrailers, or power units—Interchange agreement, approval, restrictions—Procedure when no agreement.
81.80.318	Single trip transit permit.
81.80.321	Regulatory fee—Based on gross income—Legislative intent—Delinquent fee payments—Public service revolving fund.
81.80.330	Enforcement of chapter.
81.80.340	Public service law invoked.
81.80.345	Venue—Hearings on applications.

81.80.346	Venue—Appeals from rulings and orders.
81.80.355	Unlawful advertising—Penalty.
81.80.357	Advertising—Household goods—Permit number required—Penalty.
81.80.360	Procedure—Penalties—General statute invoked.
81.80.370	Application to interstate commerce.
81.80.371	Carriers must register authority from interstate commerce commission.
81.80.375	Fee when federal requirements necessitate uniform forms evidencing interstate operations.
81.80.380	Cooperation with federal government.
81.80.381	Regulation pursuant to act of congress or agreement with interstate commerce commission.
81.80.391	Reciprocity—Apportionment of regulatory fees.
81.80.395	Idaho vehicles exempt—Reciprocity.
81.80.400	Commercial zones and terminal areas—Common carriers with existing business within zone—Persons seeking to serve as common carriers after designation.
81.80.410	Commercial zones and terminal areas—Common carriers with existing general freight authority.
81.80.420	Commercial zones and terminal areas—Expansion by commission.
81.80.430	Brokers and forwarders.
81.80.440	Recovered materials transportation—When permit required—Rate regulation exemption—Definitions.
81.80.450	Recovered materials transportation—Evaluation of rate regulation exemption—Report to legislature—Required information—Rules.
81.80.460	Recovered materials transportation—Construction.

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.

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, semitrailer, 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.

(11) "Terminal area" means an area including one or more cities or towns and environs adjacent thereto established pursuant to RCW 81.80.400.

(12) "Common carrier" and "contract carrier" includes 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. [1989 c 60 § 1; 1988 c 31 § 1; 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 not more than two disabled, unauthorized, or repossessed motor vehicles, wrecking, or exchanging an operable vehicle for a disabled vehicle and not otherwise used in transporting goods for compensation. For the purposes of this subsection, a vehicle is considered to be repossessed only from the time of its actual repossession through the end of its initial tow;

(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. [1993 c 121 § 4; 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 photocopies of all contracts to furnish transportation covered by such application. [1991 c 41 § 1; 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 five hundred fifty dollars. [1993 c 97 § 5; 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.]

81.80.115 Fees imposed under this chapter—Procedure for contesting—Rules. If a person seeks to contest the imposition of a fee imposed under this chapter, the person shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission. [1993 c 97 § 6.]

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.]

81.80.132 Common carriers—Estimate of charges for household goods—Penalty. When a common carrier gives an estimate of charges for services in carrying household goods, the carrier will endeavor to accurately reflect the actual charges. The carrier is subject to a monetary penalty not to exceed one thousand dollars per violation when the actual charges exceed the percentages allowed by the commission. [1993 c 392 § 1.]

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. Each common carrier shall purchase from the commission and post tariffs applicable to its

authority. The commission shall set fees for sale of the tariffs, and supplements and corrections of them, at rates to cover all costs of making, fixing, constructing, compiling, promulgating, publishing, and distributing the tariffs. 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 the established fee. However, 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. [1993 c 97 § 4; 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.

81.80.195 Liability insurance requirements exclusive. This chapter shall exclusively govern the liability insurance requirements for motor vehicle common and contract carriers. Any motor vehicle that meets the public liability requirements prescribed under RCW 81.80.190 shall not be required to comply with any ordinances of a city or county prescribing insurance requirements. [1989 c 264 § 2.]

Policy—1989 c 264: "The state legislature has prescribed what requirements are necessary for public liability insurance for motor vehicle common and contract carriers to adequately protect both public and private property, both real and personal. It is therefore necessary and desirable for the state to prevent each city or county from applying its own separate insurance regulations in addition to those required by the commission." [1989 c 264 § 1.]

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 Permits—Transfer—Assignment—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.

81.80.301 Registration of motor carriers doing business in state—Identification number—Receipt carried in cab—Fees. The commission may implement a system to register motor carriers doing business in this state, including, but not limited to:

(1) The prescription of an identification number and the issuance of a receipt that must be carried within the cab of each motive power vehicle operated within this state;

(2) The adoption of requirements for the carriers to carry other identifying information along with the identification number provided for in subsection (1) of this section;

(3) Participation in a single state registration program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, 49 U.S.C. Sec. 11506, as in effect on July 25, 1993; and

(4) The collection of any fee authorized by the Intermodal Surface Transportation Efficiency Act, 49 U.S.C. Sec. 11506, as in effect on July 25, 1993, in addition to any other fees authorized by law. [1993 c 97 § 1.]

81.80.305 Markings required—Exemptions. (1) All motor vehicles, other than those exempt under subsection (2) of this section, must display a permanent marking identifying the name or number, or both, on each side of the power units. For a motor vehicle that is a common or contract carrier under permit by the commission as described in subsection (3)(a), a private carrier under subsection (4), or a leased carrier as described in subsection (5) of this section, any required identification that is added, modified, or renewed after September 1, 1991, must be displayed on the driver and passenger doors of the power unit. The identification must be in a clearly legible style with letters no less than three inches high and in a color contrasting with the surrounding body panel.

(2) This section does not apply to (a) vehicles exempt under RCW 81.80.040, and (b) vehicles operated by private carriers that singly or in combination are less than thirty-six thousand pounds gross vehicle weight.

(3) If the motor vehicle is operated as (a) a common or contract carrier under a permit by the commission, the identification must contain the name of the permittee, or business name, and the permit number, or (b) a common or contract carrier holding both intrastate and interstate authority, the identification may be either the ICC certificate number or commission permit number.

(4) If the motor vehicle is a private carrier, the identification must contain the name and address of either the business operating the vehicle or the registered owner.

(5) If the motor vehicle is operated under lease, the vehicle must display either permanent markings or placards on the driver and passenger doors of the power unit. A motor vehicle under lease (a) that is operated as a common or contract carrier under permit by the commission must display identification as provided in subsection (3)(a) of this section, and (b) that is operated as a private carrier must display identification as provided in subsection (4) of this section. [1991 c 241 § 1.]

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.]

*Reviser's note: RCW 81.80.300 was repealed by 1993 c 97 § 7, effective January 1, 1994.

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 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 not more than twenty dollars and the furnishing of proof of possession of public liability and property damage insurance at levels set by commission rule. 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. [1993 c 97 § 2; 1985 c 7 § 153; 1967 c 170 § 3; 1963 c 59 § 8; 1961 c 14 § 81.80.318. Prior: 1955 c 79 § 10.]

Effective date—1993 c 97 §§ 2, 3, and 7: "Sections 2, 3, and 7 of this act take effect January 1, 1994." [1993 c 97 § 8.]

81.80.321 Regulatory fee—Based on gross income—Legislative intent—Delinquent fee payments—Public service revolving fund. In addition to all other fees to be paid, a common carrier and contract carrier shall pay a regulatory fee of no more than 0.0025 of its gross income from intrastate operations for the previous calendar year, or such other period as the commission designates by rule. The carrier shall pay the fee no later than four months after the end of the appropriate period and shall include with the payment such information as the commission requires by rule.

The legislature intends that the fees collected under this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject to this chapter, and to that end the commission may by general order decrease fees provided in this section if 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 carriers.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

All fees collected under any other provision of this chapter must be paid to the commission. The commission shall transmit the fees to the state treasurer within thirty days for deposit to the credit of the public service revolving fund. [1994 c 83 § 4; 1993 c 97 § 3.]

Effective date—1993 c 97 § 2, 3, and 7: See note following RCW 81.80.318.

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. The Washington state patrol shall perform all motor carrier safety inspections required by this chapter, including terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The attorney general shall 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. [1995 c 272 § 5; 1980 c 132 § 3; 1961 c 14 § 81.80.330. Prior: 1935 c 184 § 29; RRS § 6382-29.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

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 for which authority to operate is being applied. If more than one county is involved, the commission may hold the hearings at a location that will afford the greatest opportunity for testimony by witnesses representing the area for which authority to operate is being applied. [1988 c 58 § 1; 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.]

81.80.357 Advertising—Household goods—Permit number required—Penalty. (1) No person in the business of transporting household goods as defined by the commission in intrastate commerce shall advertise without listing the carrier's Washington utilities and transportation commission permit number in the advertisement.

(2) As of June 9, 1994, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents which show a household goods motor carrier name or address shall show the carrier's Washington utilities and transportation commission permit number. The alphabetized listing of household good[s] motor carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address shall show the carrier's current Washington utilities and transportation commission permit number.

(3) Advertising by electronic transmission need not contain the carrier's Washington utilities and transportation commission permit number if the carrier provides it to the

person selling the advertisement and it is recorded in the advertising contract.

(4) No person shall falsify a Washington utilities and transportation commission permit number or use a false or inaccurate Washington utilities and transportation commission permit number in connection with any solicitation or identification as an authorized household goods motor carrier.

(5) If, upon investigation, the commission determines that a motor carrier or person acting in the capacity of a motor carrier has violated this section, the commission may issue a penalty not to exceed five hundred dollars for every violation. [1994 c 168 § 1.]

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: "Sections 4, 5, 6 and 7 of this 1971 amendatory act shall take effect on October 31, 1971." [1971 ex.s. c 143 § 9.]

81.80.380 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.]

81.80.395 Idaho vehicles exempt—Reciprocity. The Washington utilities and transportation commission may enter into an agreement or arrangement with a duly authorized representative of the state of Idaho, for the purpose of granting to operators of commercial vehicles that are properly registered in the state of Idaho, the privilege of operating their vehicles in this state within a designated area near the border of their state without the need for registration as required by chapter 81.80 RCW if the state of Idaho grants a similar privilege to operators of commercial vehicles from this state. The initial designated area shall be limited

to state route 195 from the Idaho border to Lewiston, and SR 12 from Lewiston to Clarkston. The utilities and transportation commission shall submit other proposed reciprocal agreements in designated border areas to the legislative transportation committee for approval. [1988 c 138 § 1.]

81.80.400 Commercial zones and terminal areas—Common carriers with existing business within 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 with existing general freight authority. 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.

81.80.430 Brokers and forwarders. (1) A person who provides brokering or forwarding services for the

transportation of property in intrastate commerce shall file with the commission and keep in effect, a surety bond or deposit of satisfactory security, in a sum to be determined by the commission, but not less than five thousand dollars, conditioned upon such broker or forwarder making compensation to shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) It is unlawful for a broker or forwarder to conduct business in this state without first securing appropriate authority from the Interstate Commerce Commission, if such authority is required, and registering with and providing satisfactory evidence of financial responsibility to the Washington utilities and transportation commission. Satisfactory evidence of financial responsibility shall consist of a surety bond or deposit of security. Compliance with this requirement may be met by filing a copy of a surety bond or trust fund approved by the Interstate Commerce Commission. The commission shall grant such registration without hearing, upon application and payment of a one-time registration fee as prescribed by the commission. For purposes of this subsection, a broker or forwarder conducts business in this state when the broker or forwarder, its employees, or agents is physically present in the state and is acting as a broker or forwarder.

(3) Failure to file the bond, deposit security, or provide satisfactory evidence of financial responsibility is sufficient cause for refusal of the commission to grant the application for a permit or registration. Failure to maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration. [1991 c 146 § 1; 1990 c 109 § 1; 1989 c 60 § 2; 1988 c 31 § 2.]

81.80.440 Recovered materials transportation—When permit required—Rate regulation exemption—Definitions. (1) It is unlawful for a motor vehicle transporting recovered materials to perform a transportation service for compensation upon the public highways of this state without first having received a permit from the commission. The permits shall be granted upon a finding that the motor carrier is fit, willing, and able to provide transportation of recovered materials, and upon payment of the appropriate filing fee authorized by this chapter for other applications for operating authority, including payment of the annual regulatory fee imposed by *RCW 81.80.320. The carriers are subject to the safety of operations and insurance requirements of the commission, but are not subject to rate regulation by the commission.

(2) The provisions of this section apply to motor vehicles when:

(a) Transporting recovered materials for a person from one or more sites generating ten thousand or more tons of recovered materials per year to a reprocessing facility or an end-use manufacturing site;

(b) Transporting recovered materials from a reprocessing facility to another reprocessing facility or to an end-use manufacturing site; or

(c) Transporting recovered mixed waste paper from a reprocessing facility to an energy recovery facility.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Recovered materials" means those commodities collected for recycling or reuse, such as papers, glass, plastics, used wood, metals, yard waste, used oil, and tires, that if not collected for recycling would otherwise be destined for disposal or incineration. "Recovered materials" shall not include any wood waste or wood byproduct generated from a logging, milling, or chipping activity;

(b) "Reprocessing facility" means a business registered under chapter 82.32 RCW or a nonprofit corporation identified under chapter 24.03 RCW that accepts or purchases recovered materials and prepares those materials for resale;

(c) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection; and

(d) "Energy recovery facility" means a facility designed to burn mixed waste paper as a fuel, except that such term does not include mass burn incinerators. [1991 c 148 § 1; 1990 c 123 § 1.]

*Reviser's note: RCW 81.80.320 was repealed by 1993 c 97 § 7, effective January 1, 1994.

81.80.450 Recovered materials transportation—Evaluation of rate regulation exemption—Report to legislature—Required information—Rules. (1) The department of community, trade, and economic development, in conjunction with the utilities and transportation commission and the department of ecology, shall evaluate the effect of exempting motor vehicles transporting recovered materials from rate regulation as provided under RCW 81.80.440. The evaluation shall, at a minimum, describe the effect of such exemption on:

(a) The cost and timeliness of transporting recovered materials within the state;

(b) The volume of recovered materials transported within the state;

(c) The number of safety violations and traffic accidents related to transporting recovered materials within the state; and

(d) The availability of service related to transporting recovered materials from rural areas of the state.

(2) The department shall report the results of its evaluation to the appropriate standing committees of the legislature by October 1, 1993.

(3) The commission shall adopt rules requiring persons transporting recovered materials to submit information required under RCW 70.95.280. In adopting such rules, the commission shall include procedures to ensure the confidentiality of proprietary information. [1995 c 399 § 212; 1990 c 123 § 2.]

81.80.460 Recovered materials transportation—Construction. Nothing in *this act shall be construed as changing the provisions of RCW 81.77.010(8), nor shall *this act be construed as allowing any entity, other than a solid waste collection company authorized by the commission or an entity collecting solid waste from a city or town under the provisions of chapter 35.21 or 35A.21 RCW, to

collect solid waste which may incidentally contain recyclable materials. [1990 c 123 § 3.]

*Reviser's note: "This act" [1990 c 123] consists of the enactment of RCW 81.80.440, 81.80.450, and 81.80.460.

Chapter 81.84

STEAMBOAT COMPANIES

Sections

- 81.84.005 Definitions.
- 81.84.007 Chapter not applicable.
- 81.84.010 Certificate of convenience and necessity required—Progress reports.
- 81.84.015 Vessels providing excursion service—Certificate required.
- 81.84.020 Application—Hearing—Issuance of certificate—Determining factors.
- 81.84.025 Certificate—Insurance or bond required—Amounts.
- 81.84.030 Certificate—Transfer.
- 81.84.040 Filing fees.
- 81.84.050 Penalties—Remission, mitigation.
- 81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment.
- 81.84.070 Temporary certificate—Immediate and urgent need.

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.

81.84.005 Definitions. (*Effective until January 1, 2001.*) As used in this chapter:

(1) "Excursion service" means the carriage or conveyance of persons for compensation over the waters of this state from a point of origin and returning to the point of origin with an intermediate stop or stops at which passengers leave the vessel and reboard before the vessel returns to its point of origin.

(2) "Charter service" means the hiring of a vessel, with captain and crew, by a person or group for carriage or conveyance of persons or property. [1995 c 361 § 1.]

81.84.007 Chapter not applicable. (*Effective until January 1, 2001.*) This chapter does not apply to the following vessels or operations:

(1) Charter services;

(2) Vessels that depart and return to the point of origin without stopping at another location within the state where passengers leave the vessel;

(3) Vessels operated by not-for-profit or governmental entities that are replicas of historic vessels or that are recognized by the United States department of the interior as national historical landmarks;

(4) Excursion services that:

(a) Originate and primarily operate at least six months per year in San Juan county waters and use vessels less than sixty-five feet in length with a United States Coast Guard certificate that limits them to forty-nine passengers or less;

(b) Do not depart from the point of origin on a regular published schedule;

(c) Do not operate between the same point of origin and the same intermediate stop more than four times in any month or more than fifteen times during any twelve-month period;

(d) Use vessels that do not return to the point of origin on the day of departure; or

(e) Operate vessels upon the waters of the Pend Oreille River, Pend Oreille County, Washington. [1995 c 361 § 3.]

81.84.010 Certificate of convenience and necessity required—Progress reports. (1) No commercial ferry may 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. Service authorized by certificates issued before or after July 25, 1993, to a commercial ferry operator shall be exercised by the operator in a manner consistent with the conditions established in the certificate or tariffs: 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 annual earnings of such vessel: PROVIDED, That nothing herein shall be construed to affect the right of any county public transportation benefit area or other public agency 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 holder without first acquiring the rights granted to the certificate holder under the certificate, 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 commercial ferry, notwithstanding the provisions of any act or parts of acts inconsistent herewith.

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. However,

if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.

(3) The commission shall review certificates in existence as of July 25, 1993, where service is not being provided on all or any portion of the route or routes certificated. Based on progress reports required under subsection (2) of this section, the commission may grant an extension beyond that provided in subsection (2) of this section. Such additional extension may not exceed a total of two years. [1993 c 427 § 2; 1961 c 14 § 81.84.010. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

81.84.015 Vessels providing excursion service—Certificate required. (Effective until January 1, 2001.)

(1) Unless expressly exempted in *RCW 81.84.007, no vessel may provide excursion service over the waters of this state without first having obtained a certificate of public convenience and necessity as provided in RCW 81.84.010.

(2) Vessels providing excursion service must comply with all provisions of this chapter and rules of the commission adopted under this chapter. [1995 c 361 § 2.]

*Reviser's note: RCW 81.84.007 was repealed by 1995 c 361 § 4, effective January 1, 2001.

81.84.020 Application—Hearing—Issuance of certificate—Determining factors. (1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities and counties, and 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 prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service has elapsed: PROVIDED, A certificate shall be granted when it shall appear to the satisfaction of the commission that the commercial ferry 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 commercial ferries 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 the ferries, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the ferries to which the

certificates are issued to the end that duplication of service be eliminated and public convenience be furthered.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

(3) Subsection (2) of this section does not apply to an application for a certificate that is pending as of July 25, 1993. [1993 c 427 § 3; 1961 c 14 § 81.84.020. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

81.84.025 Certificate—Insurance or bond required—Amounts. The commission, in granting a certificate to operate as a commercial ferry, shall require the operator to first obtain liability and property damage insurance from a company licensed to write liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each vessel or ferry to be used, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person, and not less than one million dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury and property damage by reason of one act of negligence, and not less than fifty thousand dollars for damage to property of any person other than the insured; or combined bodily injury and property damage liability insurance of not less than one million dollars, and to maintain such liability and property damage insurance or surety bond in force on each vessel or ferry while so used. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect, and failure to do so is cause for revocation of the operator's certificate. [1993 c 427 § 4.]

81.84.030 Certificate—Transfer. 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. [1993 c 427 § 5; 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 commercial ferry and every officer, agent, or employee of any commercial ferry 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. [1993 c 427 § 6; 1961 c 14 § 81.84.050. Prior: 1937 c 169 § 6; RRS § 10361-2.]

81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment. The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under RCW 81.84.010 (2) or (3), if the commission has considered the progress report information required under RCW 81.84.010 (2) or (3);

(2) Failure of the certificate holder to file an annual report;

(3) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

(4) The violation of any provision of this chapter;

(5) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

(6) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(7) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

(8) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated. [1993 c 427 § 7.]

81.84.070 Temporary certificate—Immediate and urgent need. The commission may, with or without a hearing, issue temporary certificates to operate under this chapter, but only after it finds that the issuance of the temporary certificate is necessary due to an immediate and urgent need and is otherwise consistent with the public interest. The certificate may be issued for a period of up to one hundred eighty days. The commission may prescribe such special rules and impose special terms and conditions on the granting of the certificate as in its judgment are reasonable and necessary in carrying out this chapter. The commission shall collect a filing fee, not to exceed two hundred dollars, for each application for a temporary certificate. The commission shall not issue a temporary certificate to operate on a route for which a certificate has been issued or for which an application by another commercial ferry operator is pending. [1993 c 427 § 8.]

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

[Title 81 RCW—page 76]

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 cochairman and the federal member shall be designated as the federal cochairman, 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 81.100

HIGH OCCUPANCY VEHICLE SYSTEMS

Sections

- 81.100.010 Purpose.
- 81.100.020 Definitions.
- 81.100.030 Employer tax.
- 81.100.040 Adoption of goals.
- 81.100.050 Survey of tax use.
- 81.100.060 Excise tax.
- 81.100.070 High occupancy vehicle account.
- 81.100.080 Use of funds.
- 81.100.090 Interlocal agreements.
- 81.100.100 Urban public transportation system.
- 81.100.900 Construction—Severability—Headings—1990 c 43.

Use of moneys, construction priority: See 1990 c 298 § 35.

81.100.010 Purpose. The need for mobility, growing travel demand, and increasing traffic congestion in urban areas necessitate accelerated development and increased utilization of the high occupancy vehicle system. RCW 81.100.030 and 81.100.060 provide taxing authority that counties can use in the near term to accelerate development and increase utilization of the high occupancy vehicle system by supplementing available federal, state, and local funds. [1990 c 43 § 12.]

Construction—1990 c 43: "This act shall be liberally construed to give effect to the intent of this act." [1990 c 43 § 56.]

Severability—1990 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." [1990 c 43 § 57.]

Headings—1990 c 43: "Section headings, part headings, and the index as used in this act do not constitute any part of the law." [1990 c 43 § 55.]

81.100.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Transit agency" means a city that operates a transit system, a public transportation benefit area, a county transportation authority, or a metropolitan municipal corporation.

(2) The "high occupancy vehicle system" includes high occupancy vehicle lanes, related high occupancy vehicle facilities, and high occupancy vehicle programs.

(3) "High occupancy vehicle lanes" mean lanes reserved for public transportation vehicles only or public transportation vehicles and private vehicles carrying no fewer than a specified number of passengers under RCW 46.61.165.

(4) "Related facilities" means park and ride lots, park and pool lots, ramps, bypasses, turnouts, signal preemption, and other improvements designed to maximize use of the high occupancy vehicle system.

(5) "High occupancy vehicle program" means advertising the high occupancy vehicle system, promoting carpool, vanpool, and transit use, providing vanpool vehicles, and enforcement of driving restrictions governing high occupancy vehicle lanes. [1990 c 43 § 13.]

81.100.030 Employer tax. (1) A county with a population of one million or more, or a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, and having within its boundaries existing or planned high occupancy vehicle lanes on the state highway system, may, with voter approval impose an excise tax of up to two dollars per employee per month on all employers or any class or classes of employers, public and private, including the state located in the agency's jurisdiction, measured by the number of full-time equivalent employees. The county imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate.

Counties may contract with the state department of revenue or other appropriate entities for administration and collection of the tax. Such contract shall provide for deduction of an amount for administration and collection expenses.

(2) The tax shall not apply to employment of a person when the employer has paid for at least half of the cost of a transit pass issued by a transit agency for that employee, valid for the period for which the tax would otherwise be owed.

(3) A county shall adopt rules which exempt from all or a portion of the tax any employer that has entered into an agreement with the county that is designed to reduce the proportion of employees who drive in single-occupant vehicles during peak commuting periods in proportion to the degree that the agreement is designed to meet the goals for the employer's location adopted under RCW 81.100.040.

The agreement shall include a list of specific actions that the employer will undertake to be entitled to the exemption. Employers having an exemption from all or part of the tax through this subsection shall annually certify to the county that the employer is fulfilling the terms of the agreement. The exemption continues as long as the employer is in compliance with the agreement.

If the tax authorized in RCW 81.100.060 is also imposed by the county, the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under RCW 81.100.060. [1991 c 363 § 153; 1990 c 43 § 14.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

81.100.040 Adoption of goals. The legislature encourages counties, in conjunction with cities, metropolitan planning organizations, and transit agencies in metropolitan areas to adopt goals for reducing the proportion of commu-

ters who drive in single-occupant vehicles during peak commuting periods. Any county imposing a tax under this chapter must adopt such goals. In adopting these goals, counties shall consider at least the following:

- (1) Existing and anticipated levels of peak-period traffic congestion on roadways used by employees in commuting to work;
- (2) Existing and anticipated levels of transit and vanpool service and carpool programs available to and from the worksite;
- (3) Variations in employment density and employer size;
- (4) Availability and cost of parking; and
- (5) Consistency of the goals with the regional transportation plan. [1990 c 43 § 15.]

81.100.050 Survey of tax use. The department of transportation shall include in the annual transit report under RCW 35.58.2795 and 35.58.2796 an element describing actions taken under this chapter. On at least two occasions prior to December 31, 1998, the department shall include an evaluation of the effectiveness of such actions. [1990 c 43 § 16.]

81.100.060 Excise tax. A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system may, with voter approval, impose a local surcharge of not more than fifteen percent on the state motor vehicle excise tax paid under RCW 82.44.020(1) on vehicles registered to a person residing within the county and on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county. No surcharge may be imposed on vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, *46.16.080, 46.16.085, or 46.16.090.

Counties imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct an amount, as provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW shall, insofar as they are applicable to state motor vehicle excise taxes, be applicable to surcharges imposed under this section. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed by the county, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section. [1992 c 194 § 12; 1991 c 363 § 154; 1990 c 43 § 17.]

*Reviser's note: RCW 46.16.080 was repealed by 1994 c 262 § 28, effective July 1, 1994.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

81.100.070 High occupancy vehicle account. Funds collected by the department of revenue or other entity under RCW 81.100.030, or by the department of licensing under RCW 81.100.060, less the deduction for collection expenses, shall be deposited in the high occupancy vehicle account hereby created in the custody of the state treasurer. On the first day of the months of January, April, July, and October of each year, the state treasurer shall distribute the funds in the account to the counties on whose behalf the funds were received. The state treasurer shall make the distribution under this section without appropriation. [1991 sp.s. c 13 §§ 105, 119; 1990 c 43 § 18.]

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

81.100.080 Use of funds. Funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon shall be used by the county in a manner consistent with the regional transportation plan only for costs of collection, costs of preparing, adopting, and enforcing agreements under RCW 81.100.030(3), for construction of high occupancy vehicle lanes and related facilities, mitigation of environmental concerns that result from construction or use of high occupancy vehicle lanes and related facilities, payment of principal and interest on bonds issued for the purposes of this section, for high occupancy vehicle programs as defined in RCW 81.100.020(5), and for commuter rail projects in accordance with RCW 81.104.120. No funds collected under RCW 81.100.030 or 81.100.060 after June 30, 2000, may be pledged for the payment or security of the principal or interest on any bonds issued for the purposes of this section. Not more than ten percent of the funds may be used for transit agency high occupancy vehicle programs.

Priorities for construction of high occupancy vehicle lanes and related facilities shall be as follows:

(1)(a) To accelerate construction of high occupancy vehicle lanes on the interstate highway system, as well as related facilities;

(b) To finance or accelerate construction of high occupancy vehicle lanes on the noninterstate state highway system, as well as related facilities.

(2) To finance construction of high occupancy vehicle lanes on local arterials, as well as related facilities.

Moneys received by an agency under this chapter shall be used in addition to, and not as a substitute for, moneys currently used by the agency for the purposes specified in this section.

Counties may contract with cities or the state department of transportation for construction of high occupancy vehicle lanes and related facilities, and may issue general obligation bonds to fund such construction and use funds received under this chapter to pay the principal and interest on such bonds. [1990 c 43 § 19.]

81.100.090 Interlocal agreements. Counties imposing a tax under this chapter shall enter into an agreement through the interlocal cooperation act with the department of transportation. The agreement shall provide an opportunity

for the department of transportation, cities and transit agencies having within their boundaries a portion of the existing or planned high occupancy vehicle system as contained in the regional transportation plan, to coordinate programming and operational decisions affecting the high occupancy vehicle system. If two or more adjoining counties impose a tax under RCW 81.100.030 or 81.100.060, the counties shall jointly enter one interlocal agreement with the department of transportation. [1990 c 43 § 20.]

81.100.100 Urban public transportation system. The high occupancy vehicle system is an urban public transportation system as defined in RCW 47.04.082. [1990 c 43 § 21.]

81.100.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 81.100.010.

Chapter 81.104

HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

- 81.104.010 Purpose.
- 81.104.015 Definitions.
- 81.104.020 State policy roles.
- 81.104.030 Policy development outside central Puget Sound—Voter approval.
- 81.104.040 Policy development in central Puget Sound—Voter approval.
- 81.104.050 Expansion of service.
- 81.104.060 State role in planning and implementation.
- 81.104.070 Responsibility for system implementation.
- 81.104.080 Regional transportation planning.
- 81.104.090 Department of transportation responsibilities—Funding of planning projects.
- 81.104.100 Planning process.
- 81.104.110 Independent system plan oversight.
- 81.104.120 Commuter rail service—Voter approval.
- 81.104.130 Financial responsibility.
- 81.104.140 Dedicated funding sources.
- 81.104.150 Employer tax.
- 81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals.
- 81.104.170 Sales and use tax.
- 81.104.180 Pledge of revenues for bond retirement.
- 81.104.190 Contract for collection of taxes.
- 81.104.900 Construction—Severability—Headings—1990 c 43.
- 81.104.901 Section headings not part of law—Severability—Effective date—1992 c 101.

High capacity transportation account: RCW 47.78.010.

81.104.010 Purpose. Increasing congestion on Washington's roadways calls for identification and implementation of high capacity transportation system alternatives. The legislature believes that local jurisdictions should coordinate and be responsible for high capacity transportation policy development, program planning, and implementation. The state should assist by working with local agencies on issues involving rights of way, partially financing projects meeting established state criteria including development and completion of the high occupancy vehicle lane system, authorizing local jurisdictions to finance high capacity transportation systems through voter-approved tax options, and providing technical assistance and information. [1992 c 101 § 18; 1991 c 318 § 1; 1990 c 43 § 22.]

81.104.015 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "High capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights of way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

(2) "Regional transit system" means a high capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high capacity transportation system under the jurisdiction of a regional transit authority.

(3) "Transit agency" means city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas. [1992 c 101 § 19.]

81.104.020 State policy roles. The department of transportation's current policy role in transit is expanded to include other high capacity transportation development as part of a multimodal transportation system.

(1) The department of transportation shall implement a program for high capacity transportation coordination, planning, and technical studies with appropriations from the high capacity transportation account.

(2) The department shall assist local jurisdictions and regional transportation planning organizations with high capacity transportation planning efforts. [1991 c 318 § 2; 1990 c 43 § 23.]

81.104.030 Policy development outside central Puget Sound—Voter approval. (1) In any county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders, except for any county having a population of more than one million or a county that has a population more than four hundred thousand and is adjacent to a county with a population of more than one million, transit agencies may elect to establish high capacity transportation service. Such agencies shall form a regional policy committee with proportional representation based upon population distribution within the designated service area and a representative of the department of transportation, or such agencies may use the designated metropolitan planning organization as the regional policy committee.

Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only

those voters residing within the service area in the state of Washington.

(2) Transit agencies in counties adjoining state or international boundaries are authorized to participate in the regional high capacity transportation programs of an adjoining state or Canadian province. [1995 2nd sp.s. c 14 § 541; 1993 c 428 § 1; 1992 c 101 § 20; 1991 c 318 § 3; 1991 c 309 § 2; (1991 c 363 § 155 repealed by 1991 c 309 § 6); 1990 c 43 § 24.]

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

81.104.040 Policy development in central Puget Sound—Voter approval. Transit agencies in each county with a population of one million or more, and in each county with a population of from two hundred ten thousand to less than one million bordering a county with a population of one million or more that are authorized on January 1, 1991, to provide high capacity transportation planning and operating services must establish through interlocal agreements a joint regional policy committee with proportional representation based upon the population distribution within each agency's designated service area, as determined by the parties to the agreement.

(1) The membership of the joint regional policy committee shall consist of locally elected officials who serve on the legislative authority of the existing transit systems and a representative from the department of transportation. Nonvoting membership for elected officials from adjoining counties may be allowed at the committee's discretion.

(2) The joint regional policy committee shall be responsible for the preparation and adoption of a regional high capacity transportation implementation program, which shall include the system plan, project plans, and a financing plan. This program shall be in conformance with the regional transportation planning organization's regional transportation plan and consistent with RCW 81.104.080.

(3) The joint regional policy committee shall present an adopted high capacity transportation system plan and financing plan to the boards of directors of the transit agencies within the service area or to the regional transit authority, if such authority has been formed. The authority shall proceed as prescribed in RCW 81.112.030. [1992 c 101 § 21; 1991 c 318 § 4; 1990 c 43 § 25.]

81.104.050 Expansion of service. Regional high capacity transportation service may be expanded beyond the established district boundaries through interlocal agreements among the transit agencies and any regional transit authorities in existence. [1992 c 101 § 22; 1991 c 318 § 5; 1990 c 43 § 26.]

81.104.060 State role in planning and implementation. (1) The state's planning role in high capacity transportation development as one element of a multimodal transportation system should facilitate cooperative state and local planning efforts.

(2) The department of transportation may serve as a contractor for high capacity transportation system and project design, administer construction, and assist agencies autho-

rizied to provide service in the acquisition, preservation, and joint use of rights of way.

(3) The department and local jurisdictions shall continue to cooperate with respect to the development of high occupancy vehicle lanes and related facilities, associated roadways, transfer stations, people mover systems developed either by the public or private sector, and other related projects.

(4) The department in cooperation with local jurisdictions shall develop policies which enhance the development of high speed interregional systems by both the private and the public sector. These policies may address joint use of rights of way, identification and preservation of transportation corridors, and joint development of stations and other facilities. [1991 c 318 § 6; 1990 c 43 § 27.]

81.104.070 Responsibility for system implementation. (1) The state shall not become an operating agent for regional high capacity transportation systems.

(2) Agencies providing high capacity transportation service are responsible for planning, construction, operations, and funding including station area design and development, and parking facilities. Agencies may implement necessary contracts, joint development agreements, and interlocal government agreements. Agencies providing service shall consult with affected local jurisdictions and cooperate with comprehensive planning processes. [1990 c 43 § 28.]

81.104.080 Regional transportation planning. Where applicable, regional transportation plans and local comprehensive plans shall address the relationship between urban growth and an effective high capacity transportation system plan, and provide for cooperation between local jurisdictions and transit agencies.

(1) Regional high capacity transportation plans shall be included in the designated regional transportation planning organization's regional transportation plan review and update process to facilitate development of a coordinated multimodal transportation system and to meet federal funding requirements.

(2) Interlocal agreements between transit authorities, cities, and counties shall set forth conditions for assuring land uses compatible with development of high capacity transportation systems. These include developing sufficient land use densities through local actions in high capacity transportation corridors and near passenger stations, preserving transit rights of way, and protecting the region's environmental quality. The implementation program for high capacity transportation systems shall favor cities and counties with supportive land use plans. In developing local actions intended to carry out these policies cities and counties shall insure the opportunity for public comment and participation in the siting of such facilities, including stations or transfer facilities. Agencies providing high capacity transportation services, in cooperation with public and private interests, shall promote transit-compatible land uses and development which includes joint development.

(3) Interlocal agreements shall be consistent with state planning goals as set forth in chapter 36.70A RCW. Agreements shall also include plans for concentrated

employment centers, mixed-use development, and housing densities that support high capacity transportation systems.

(4) Agencies providing high capacity transportation service and other transit agencies shall develop a cooperative process for the planning, development, operations, and funding of feeder transportation systems. Feeder systems may include existing and future intercity passenger systems and alternative technology people mover systems which may be developed by the private or public sector.

(5) Cities and counties along corridors designated in a high capacity transportation system plan shall enter into agreements with their designated regional transportation planning organizations, for the purpose of participating in a right of way preservation review process which includes activities to promote the preservation of the high capacity transportation rights of way. The regional transportation planning organization shall serve as the coordinator of the review process.

(a) Cities and counties shall forward all development proposals for projects within and adjoining to the rights of way proposed for preservation to the designated regional transportation planning organizations, which shall distribute the proposals for review by parties to the right of way preservation review process.

(b) The regional transportation planning organizations shall also review proposals for conformance with the regional transportation plan and associated regional development strategies. The designated regional transportation planning organization shall within ninety days compile local and regional agency comments and communicate the same to the originating jurisdiction and the joint regional policy committee. [1991 c 318 § 7; 1990 c 43 § 29.]

81.104.090 Department of transportation responsibilities—Funding of planning projects. The department of transportation shall be responsible for distributing amounts appropriated from the high capacity transportation account, which shall be allocated by the department of transportation based on criteria in subsection (2) of this section. The department shall assemble and participate in a committee comprised of transit agencies eligible to receive funds from the high capacity transportation account for the purpose of reviewing fund applications.

(1) State high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

(2) Authorizations for state funding for high capacity transportation planning projects shall be subject to the following criteria:

(a) Conformance with the designated regional transportation planning organization's regional transportation plan;

(b) Local matching funds;

(c) Demonstration of projected improvement in regional mobility;

(d) Conformance with planning requirements prescribed in RCW 81.104.100, and if five hundred thousand dollars or more in state funding is requested, conformance with the requirements of RCW 81.104.110; and

(e) Establishment, through interlocal agreements, of a joint regional policy committee as defined in RCW 81.104.030 or 81.104.040.

(3) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100. [1995 c 269 § 2602; 1993 c 393 § 2; 1991 c 318 § 8; 1990 c 43 § 30.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective date—1993 c 393: See RCW 47.66.900.

81.104.100 Planning process. To assure development of an effective high capacity transportation system, local authorities shall follow the following planning process:

(1) Regional, multimodal transportation planning is the ongoing urban transportation planning process conducted in each urbanized area by its regional transportation planning organization. During this process, regional transportation goals are identified, travel patterns are analyzed, and future land use and travel are projected. The process provides a comprehensive view of the region's transportation needs but does not select specified modes to serve those needs. The process shall identify a priority corridor or corridors for further study of high capacity transportation facilities if it is deemed feasible by local officials.

(2) High capacity transportation system planning is the detailed evaluation of a range of high capacity transportation system options, including: Do nothing, low capital, and ranges of higher capital facilities. To the extent possible this evaluation shall take into account the urban mass transportation administration's requirements identified in subsection (3) of this section.

High capacity transportation system planning shall proceed as follows:

(a) Organization and management. The responsible local transit agency or agencies shall define roles for various local agencies, review background information, provide for public involvement, and develop a detailed work plan for the system planning process.

(b) Development of options. Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for several candidate technologies shall be developed.

(c) Analysis methods. The local transit agency shall develop reports describing the analysis and assumptions for the estimation of capital costs, operating and maintenance costs, methods for travel forecasting, a financial plan and an evaluation methodology.

(d) The system plan submitted to the voters pursuant to RCW 81.104.140 shall address, but is not limited to the following issues:

(i) Identification of level and types of high capacity transportation services to be provided;

(ii) A plan of high occupancy vehicle lanes to be constructed;

(iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;

(iv) Performance characteristics of technologies in the system plan;

(v) Patronage forecasts;

(vi) A financing plan describing: Phasing of investments; capital and operating costs and expected revenues; cost-effectiveness represented by a total cost per system rider and new rider estimate; estimated ridership and the cost of service for each individual high capacity line; and identification of the operating revenue to operating expense ratio.

The financing plan shall specifically differentiate the proposed use of funds between high capacity transportation facilities and services, and high occupancy vehicle facilities;

(vii) Description of the relationship between the high capacity transportation system plan and adopted land use plans;

(viii) An assessment of social, economic, and environmental impacts; and

(ix) Mobility characteristics of the system presented, including but not limited to: Qualitative description of system/service philosophy and impacts; qualitative system reliability; travel time and number of transfers between selected residential, employment, and activity centers; and system and activity center mode splits.

(3) High capacity transportation project planning is the detailed identification of alignments, station locations, equipment and systems, construction schedules, environmental effects, and costs. High capacity transportation project planning shall proceed as follows: The local transit agency shall analyze and produce information needed for the preparation of environmental impact statements. The impact statements shall address the impact that development of such a system will have on abutting or nearby property owners. The process of identification of alignments and station locations shall include notification of affected property owners by normal legal publication. At minimum, such notification shall include notice on the same day for at least three weeks in at least two newspapers of general circulation in the county where such project is proposed. Special notice of hearings by the conspicuous posting of notice, in a manner designed to attract public attention, in the vicinity of areas identified for station locations or transfer sites shall also be provided.

In order to increase the likelihood of future federal funding, the project planning processes shall follow the urban mass transportation administration's requirements as described in "Procedures and Technical Methods for Transit Project Planning", published by the United States department of transportation, urban mass transportation administration, September 1986, or the most recent edition. Nothing in this subsection shall be construed to preclude detailed evaluation of more than one corridor in the planning process.

The department of transportation shall provide system and project planning review and monitoring in cooperation with the expert review panel identified in RCW 81.104.110. In addition, the local transit agency shall maintain a continuous public involvement program and seek involvement of other government agencies. [1992 c 101 § 23; 1991 sp.s. c 15 § 68; 1991 c 318 § 9; 1990 c 43 § 31.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

81.104.110 Independent system plan oversight. The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140.

(1) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(2) The expert review panel shall be selected cooperatively by the chair of the legislative transportation committee, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(3) The chair of the expert review panel shall be designated by the appointing authorities.

(4) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to chapter 43.03 RCW.

(5) The panel shall carry out the duties set forth in subsections (6) and (7) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans. Funds appropriated for expenses of the expert panel shall be administered by the department of transportation.

(6) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(7) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the governor, the legislative transportation committee, the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

(8) The legislative transportation committee shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the legislative transportation committee and shall be paid from appropriations for that purpose from the high capacity transportation account. [1991 c 318 § 10; 1991 c 309 § 3; 1990 c 43 § 32.]

Reviser's note: This section was amended by 1991 c 309 § 3 and by 1991 c 318 § 10, 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).

81.104.120 Commuter rail service—Voter approval.

(1) Transit agencies and regional transit authorities may operate or contract for commuter rail service where it is deemed to be a reasonable alternative transit mode. A reasonable alternative is one whose passenger costs per mile, including costs of trackage, equipment, maintenance, operations, and administration are equal to or less than comparable bus, entrained bus, trolley, or personal rapid transit systems.

(2) A county may use funds collected under RCW 81.100.030 or 81.100.060 to contract with one or more transit agencies or regional transit authorities for planning, operation, and maintenance of commuter rail projects which:

(a) Are consistent with the regional transportation plan; (b) have met the project planning and oversight requirements of RCW 81.104.100 and 81.104.110; and (c) have been approved by the voters within the service area of each transit agency or regional transit authority participating in the project. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington. The phrase "approved by the voters" includes specific funding authorization for the commuter rail project.

(3) The utilities and transportation commission shall maintain safety responsibility for passenger rail service operating on freight rail lines. Agencies providing passenger rail service on lines other than freight rail lines shall maintain safety responsibility for that service. [1993 c 428 § 2; 1992 c 101 § 24; 1990 c 43 § 33.]

81.104.130 Financial responsibility. Agencies providing high capacity transportation service shall determine optimal debt-to-equity ratios, establish capital and operations allocations, and establish fare-box recovery return policy. [1990 c 43 § 34.]

81.104.140 Dedicated funding sources. (1) Agencies authorized to provide high capacity transportation service, including transit agencies and regional transit authorities, are hereby granted dedicated funding sources for such systems. These dedicated funding sources, as set forth in RCW 81.104.150, 81.104.160, and 81.104.170, are authorized only for agencies located in (a) each county with a population of two hundred ten thousand or more and (b) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described under (a) of this subsection. In any county with a population of one million or more or in any county having a population of four hundred thousand or more bordering a county with a population of one million or more, these funding sources may be imposed only by a regional transit authority.

(2) Agencies planning to construct and operate a high capacity transportation system should also seek other funds, including federal, state, local, and private sector assistance.

(3) Funding sources should satisfy each of the following criteria to the greatest extent possible:

(a) Acceptability;

(b) Ease of administration;

(c) Equity;

(d) Implementation feasibility;

(e) Revenue reliability; and

(f) Revenue yield.

(4) Agencies participating in regional high capacity transportation system development are authorized to levy and collect the following voter-approved local option funding sources:

(a) Employer tax as provided in RCW 81.104.150;

(b) Special motor vehicle excise tax as provided in RCW 81.104.160; and

(c) Sales and use tax as provided in RCW 81.104.170.

Revenues from these taxes may be used only to support those purposes prescribed in subsection (10) of this section. Before the date of an election authorizing an agency to impose any of the taxes enumerated in this section and authorized in RCW 81.104.150, 81.104.160, and 81.104.170, the agency must comply with the process prescribed in RCW 81.104.100 (1) and (2) and 81.104.110. No construction on exclusive right of way may occur before the requirements of RCW 81.104.100(3) are met.

(5) Authorization in subsection (4) of this section shall not adversely affect the funding authority of transit agencies not provided for in this chapter. Local option funds may be used to support implementation of interlocal agreements with respect to the establishment of regional high capacity transportation service. Except when a regional transit authority exists, local jurisdictions shall retain control over moneys generated within their boundaries, although funds may be commingled with those generated in other areas for planning, construction, and operation of high capacity transportation systems as set forth in the agreements.

(6) Agencies planning to construct and operate high capacity transportation systems may contract with the state for collection and transference of voter-approved local option revenue.

(7) Dedicated high capacity transportation funding sources authorized in RCW 81.104.150, 81.104.160, and 81.104.170 shall be subject to voter approval by a simple majority. A single ballot proposition may seek approval for one or more of the authorized taxing sources. The ballot title shall reference the document identified in subsection (8) of this section.

(8) Agencies shall provide to the registered voters in the area a document describing the systems plan and the financing plan set forth in RCW 81.104.100. It shall also describe the relationship of the system to regional issues such as development density at station locations and activity centers, and the interrelationship of the system to adopted land use and transportation demand management goals within the region. This document shall be provided to the voters at least twenty days prior to the date of the election.

(9) For any election in which voter approval is sought for a high capacity transportation system plan and financing plan pursuant to RCW 81.104.040, a local voter's pamphlet shall be produced as provided in chapter 29.81A RCW.

(10) Agencies providing high capacity transportation service shall retain responsibility for revenue encumbrance, disbursement, and bonding. Funds may be used for any purpose relating to planning, construction, and operation of high capacity transportation systems and commuter rail

systems, personal rapid transit, busways, bus sets, and entrained and linked buses. [1992 c 101 § 25. Prior: 1991 c 318 § 11; 1991 c 309 § 4; (1991 c 363 § 157 repealed by 1991 c 309 § 6); 1990 c 43 § 35.]

81.104.150 Employer tax. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved may impose an excise tax of up to two dollars per month per employee on all employers located within the agency's jurisdiction, measured by the number of full-time equivalent employees, solely for the purpose of providing high capacity transportation service. The rate of tax shall be approved by the voters. This tax may not be imposed by: (1) A transit agency when the county within which it is located is imposing an excise tax pursuant to RCW 81.100.030; or (2) a regional transit authority when any county within the authority's boundaries is imposing an excise tax pursuant to RCW 81.100.030. The agency imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate. [1992 c 101 § 26; 1990 c 43 § 41.]

81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals. (1) Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters, and if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding eighty one-hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing high capacity transportation service. In any county imposing a motor vehicle excise tax surcharge pursuant to RCW 81.100.060, the maximum tax rate under this section shall be reduced to a rate equal to eighty one-hundredths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed pursuant to RCW 81.100.060. This rate shall not apply to vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, *46.16.080, 46.16.085, or 46.16.090.

(2) An agency imposing a tax under subsection (1) of this section may also impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the agency's jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall bear the same ratio to the rate imposed under RCW 82.08.020(2) as the excise tax rate imposed under subsection (1) of this section bears to the excise tax rate imposed under RCW 82.44.020 (1) and (2). The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The revenue collected under this subsection shall be used in the same manner as excise taxes under subsection (1) of this section. [1992 c 194 § 13; 1992 c 101 § 27; 1991 c 318 § 12; 1990 c 43 § 42.]

Reviser's note: (1) This section was amended by 1992 c 101 § 27 and by 1992 c 194 § 13, 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) RCW 46.16.080 was repealed by 1994 c 262 § 28, effective July 1, 1994.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

81.104.170 Sales and use tax. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing high capacity transportation service.

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 the taxing district. The maximum rate of such tax shall be approved by the voters and shall not exceed 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 maximum rate of such tax that may be imposed shall not exceed nine-tenths of one percent in any county that imposes a tax under RCW 82.14.340, or within a regional transit authority if any county within the authority imposes a tax under RCW 82.14.340. [1992 c 101 § 28; 1990 2nd ex.s. c 1 § 902; 1990 c 43 § 43.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

81.104.180 Pledge of revenues for bond retirement. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities are authorized to pledge revenues from the employer tax authorized by RCW 81.104.150, the special motor vehicle excise tax authorized by RCW 81.104.160, and the sales and use tax authorized by RCW 81.104.170, to retire bonds issued solely for the purpose of providing high capacity transportation service. [1992 c 101 § 29; 1990 c 43 § 44.]

81.104.190 Contract for collection of taxes. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit systems may contract with the state department of revenue or other appropriate entities for administration and collection of any tax authorized by RCW 81.104.150, 81.104.160, and 81.104.170. [1992 c 101 § 30; 1990 c 43 § 45.]

81.104.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 81.100.010.

81.104.901 Section headings not part of law—Severability—Effective date—1992 c 101. See RCW 81.112.900 through 81.112.902.

Chapter 81.108

LOW-LEVEL RADIOACTIVE WASTE SITES

Sections

81.108.010	Purpose.
81.108.020	Definitions.
81.108.030	Commission—Powers.
81.108.040	Rates—Initial determination—Fees.
81.108.050	Maximum rates—Revisions.
81.108.060	Contracted disposal rates.
81.108.070	Extraordinary volume adjustment.
81.108.080	Complaint—Hearing.
81.108.090	Revenue statement—Fees—Delinquent fee payments.
81.108.100	Exemptions—Monopolies—Hearings—Rates.
81.108.110	Competitive companies—Exemptions.
81.108.900	Construction.
81.108.901	Effective dates—1991 c 272.

81.108.010 Purpose. State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. The Northwest regional compact, comprised of the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as its disposal facility the low-level radioactive waste disposal site located near Richland, Washington. This site is expected to be the sole site for disposal of low-level radioactive waste for compact members effective January 1, 1993. Future closure of this site will require significant financial resources.

Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. Washington state's low-level radioactive waste disposal site has been used by the nation and the Northwest compact as a disposal site since 1965. The public has come to rely on access to this site for disposal of low-level radioactive waste, which requires separate handling from other solid and hazardous wastes. The price of disposing of low-level radioactive waste at the Washington state low-level radioactive waste disposal site is anticipated to increase when the federal low-level radioactive waste policy amendments act of 1985 is implemented and waste generated outside the Northwest compact states is excluded.

When these events occur, to protect Washington and other Northwest compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, there will be a need to regulate the rates charged by the operator of Washington's low-level radioactive waste disposal site. This chapter is adopted pursuant to section 8, chapter 21, Laws of 1990. [1991 c 272 § 1.]

81.108.020 Definitions. Definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Effective rate" means the highest permissible rate, calculated as the lowest contract rate plus an administrative fee, if applicable, determined pursuant to RCW 81.108.040.

(3) "Extraordinary volume" means volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in

excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(4) "Extraordinary volume adjustment" means a mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in RCW 81.108.070.

(5) "Generator" means a person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(6) "Inflation adjustment" means a mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period, as measured by a common, verifiable price index as determined in RCW 81.108.040.

(7) "Initial rate proceeding" means the proceeding described in RCW 81.108.040.

(8) "Maximum disposal rate" means the rate described in RCW 81.108.050.

(9) "Site" means a location, structure, or property used or to be used for the storage, treatment, or disposal of low-level radioactive waste for compensation within the state of Washington.

(10) "Site operator" means a low-level radioactive waste site operating company as defined in RCW 81.04.010.

(11) "Volume adjustment" means a mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site. [1991 c 272 § 2.]

81.108.030 Commission—Powers. (1) The commission shall have jurisdiction over the sites and site operators as set forth in this chapter.

(2)(a) The commission shall establish rates to be charged by site operators. In establishing the rates, the commission shall assure that they are fair, just, reasonable, and sufficient considering the value of the site operator's leasehold and license interests, the unique nature of its business operations, the site operator's liability associated with the site, its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises. The rates shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(b) In exercising the power in this subsection the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. The relation of site operator expenses to site operator revenues may be deemed the proper test of a reasonable return.

(3) 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 review to the superior court filed therewith, appeals filed with the appellate courts 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.

(4) At any time after January 1, 1992, the commission may: (a) Prescribe a system of accounts for site operators using as a starting point the existing system used by site operators; (b) audit the books of site operators; (c) obtain books and records from site operators; (d) assess penalties; and (e) require semiannual reports regarding the results of operations for the site.

(5) The commission may adopt rules necessary to carry out its functions under this chapter. [1991 c 272 § 4.]

81.108.040 Rates—Initial determination—Fees. (1)

On or before March 1, 1992, site operators shall file a request with the commission to establish an initial maximum disposal rate. The filing shall include, at a minimum, testimony, exhibits, workpapers, summaries, annual reports, cost studies, proposed tariffs, and other documents as required by the commission in rate cases generally under its jurisdiction.

(2) After receipt of a request, the commission shall set the request for a hearing and require the site operator to provide for notice to all known customers that ship or deliver waste to the site. The proceedings before the commission shall be conducted in accordance with chapter 34.05 RCW and rules of procedure established by the commission.

(3) No later than January 1, 1993, the commission shall establish the initial maximum disposal rates that may be charged by site operators.

(4) In the initial rate proceeding the commission also shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments.

(5) The commission also shall determine the administrative fee, which shall be a percentage or an amount that represents increased administrative costs associated with acceptance of small volumes of waste by a site operator. The administrative fee may be revised by the commission from time to time upon its own motion or upon the petition of an interested person.

(6) The rates specified in this section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 5.]

81.108.050 Maximum rates—Revisions. (1) The

maximum disposal rates that a site operator may charge generators shall be determined in accordance with this section. The rates shall include all charges for disposal services at the site.

(2) Initially, the maximum disposal rates shall be the initial rates established pursuant to RCW 81.108.040.

(3) Subsequently, the maximum disposal rates shall be adjusted semiannually in January and July of each year to incorporate inflation and volume adjustments. Such adjustments shall take effect thirty days after filing with the commission unless the commission authorizes that the adjustments take effect earlier, or the commission contests the calculation of the adjustments, in which case the commission may suspend the filing. A site operator shall provide notice to its customers concurrent with the filing.

(4)(a) Subsequently, a site operator may also file for revisions to the maximum disposal rates due to:

(i) Changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross revenue basis against or collected by the site operator, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, leasehold excise taxes, commission regulatory fees, municipal taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(ii) Factors outside the control of the site operator such as a material change in regulatory requirements regarding the physical operation of the site.

(b) Revisions to the maximum disposal rate shall take effect thirty days after filing with the commission unless the commission suspends the filing or authorizes the proposed adjustments to take effect earlier.

(5) Upon establishment of a contract rate pursuant to RCW 81.108.060 for a disposal fee, the site operator may not collect a disposal fee that is greater than the effective rate. The effective rate shall be in effect so long as such contract rate remains in effect. Adjustments to the maximum disposal rates may be made during the time an effective rate is in place. Contracts for disposal of extraordinary volumes pursuant to RCW 81.108.070 shall not be considered in determining the effective rate.

(6) The site operator may petition the commission for new maximum disposal rates at any time. Upon receipt of such a petition, the commission shall set the matter for hearing and shall issue an order within seven months of the filing of the petition. The petition shall be accompanied by the documents required to accompany the filing for initial rates. The hearing on the petition shall be conducted in accordance with the commission's rules of practice and procedure.

(7) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 6.]

81.108.060 Contracted disposal rates. (1) At any time, a site operator may contract with any person to provide a contract disposal rate lower than the maximum disposal rate.

(2) A contract or contract amendment shall be submitted to the commission for approval at least thirty days before its effective date. The commission may approve the contract or suspend the contract and set it for hearing. If the commission takes no action within thirty days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 7.]

81.108.070 Extraordinary volume adjustment. (1) In establishing the extraordinary volume adjustment, unless the site operator and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the site operator's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(2) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 8.]

81.108.080 Complaint—Hearing. (1) At any time, the commission or an interested person may file a complaint against a site operator alleging that the rates established pursuant to RCW 81.108.040 or 81.108.050 are not in conformity with the standards set forth in RCW 81.108.030 or that the site operator is otherwise not acting in conformity with the requirements of this chapter. Upon filing of the complaint, the commission shall cause a copy of the complaint to be served upon the site operator. The complaining party shall have the burden of proving that the maximum disposal rates determined pursuant to RCW 81.108.050 are not just, fair, reasonable, or sufficient. The hearing shall conform to the rules of practice and procedure of the commission for other complaint cases.

(2) The commission shall encourage alternate forms of dispute resolution to resolve disputes between a site operator and any other person regarding matters covered by this chapter. [1991 c 272 § 9.]

81.108.090 Revenue statement—Fees—Delinquent fee payments. (1) A site operator shall, on or before May 1, 1992, and each year thereafter, file with the commission a statement 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 percent of the amount of the gross operating revenue, exclusive of site surveillance fees, perpetual care and maintenance fees, site closure fees, and state or federally imposed out-of-region surcharges.

(2) Fees collected under this chapter shall reasonably approximate the cost of supervising and regulating site operators. The commission may order a decrease in fees by March 1st of any year in which it determines that the moneys then in the radioactive waste disposal companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating site operators.

(3) Fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund.

(4) Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the

rate of one percent per month. [1994 c 83 § 5; 1991 c 272 § 10.]

81.108.100 Exemptions—Monopolies—Hearings—Rates. (1) A low-level waste disposal site operator is exempt as specified in RCW 81.108.030(2)(a), 81.108.040(6), 81.108.050(7), 81.108.060(3), and 81.108.070(3) unless a monopoly situation exists with respect to the site operated by such site operator. A monopoly situation exists if either of the following is present:

(a) No disposal facility is available to Northwest compact generators of low-level radioactive waste other than the site or sites operated by such site operator or its affiliates; or

(b) Disposal rates at other sites are not reasonable alternatives for Northwest compact generators, considering: Disposal rates at other facilities; current disposal rates charged by the site operator; historic relationships between the site operator's rates and rates at other facilities; and changes in the operator's rates considering changes in waste volumes, taxes, and fees. A monopoly situation does not exist if either of the following facilities operates or is projected to operate after December 31, 1992:

(i) Any existing low-level radioactive waste disposal site outside the state of Washington, other than facilities operated by affiliates of a site operator, provided that such site or sites do not charge disposal rates that discriminate against Northwest compact generators, except to the extent, through December 31, 1994, such discrimination is authorized by amendment of current federal law.

(ii) An existing facility within the Northwest compact not receiving low-level radioactive waste offers to receive such waste under substantially similar terms and conditions.

(2) The exemption shall be in effect until such time as the commission finds, after notice and hearing, upon motion by the commission or upon petition by any interested party, that a monopoly situation exists or will exist as of January 1, 1993. The finding shall be based upon application of the criteria set forth in this section. The commission may assess a site operator for all of the commission's costs of supervision and regulation prior to and relative to determining whether the exemption applies to the site operator. If the commission determines that a site operator is not subject to the exemption, it shall collect its costs of supervision and regulation under RCW 81.108.090.

(3) When an exemption is in effect, any increase in the rates charged by the operator effective January 1, 1993, for services other than the base rate for disposal of solid material in packages of twelve cubic feet or less shall be no more than the percentage increase in the base rate in effect on January 1, 1993. [1991 c 272 § 11.]

81.108.110 Competitive companies—Exemptions. (1) At any time after this chapter has been implemented with respect to a site operator, such site operator may petition the commission to be classified as competitive. The commission may initiate classification proceedings on its own motion. The commission shall enter its final order with respect to classification within seven months from the date of filing of a company's petition or the commission's motion.

(2) The commission shall classify a site operator as a competitive company if the commission finds, after notice and hearing, that the disposal services offered are subject to competition because the company's customers have reasonably available alternatives. In determining whether a company is competitive, the commission's consideration shall include, but not be limited to:

(a) Whether the system of interstate compacts and regional disposal sites established by federal law has been implemented so that the Northwest compact site located near Richland, Washington is the exclusive site option for disposal by customers within the Northwest compact states;

(b) Whether waste generated outside the Northwest compact states is excluded; and

(c) The ability of alternative disposal sites to make functionally equivalent services readily available at competitive rates, terms, and conditions.

(3) The commission may reclassify a competitive site operator if reclassification would protect the public interest as set forth in this section.

(4) Competitive low-level radioactive waste disposal companies shall be exempt from commission regulation and fees during the time they are so classified. [1991 c 272 § 12.]

81.108.900 Construction. Nothing in this chapter shall be construed to affect the jurisdiction of another state agency. [1991 c 272 § 13.]

81.108.901 Effective dates—1991 c 272. (1) Sections 1 through 15 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Sections 1 through 14 and 22 of this act shall take effect July 1, 1991, and section 15 of this act shall take effect immediately [May 20, 1991].

(2) Sections 16 through 21 and 23 of this act shall take effect January 1, 1993. [1991 c 272 § 24.]

Chapter 81.112

REGIONAL TRANSPORTATION AUTHORITIES

Sections

81.112.010	Findings—Intent.
81.112.020	Definitions.
81.112.030	Regional transit authority.
81.112.040	Board appointments—Voting—Expenses.
81.112.050	Area included—Elections.
81.112.060	Powers.
81.112.070	General powers.
81.112.080	Additional powers—Acquisition of facilities—Disposal of property—Rates, tolls, fares, charges.
81.112.090	Agreements with operators of high capacity transportation services.
81.112.100	Transfer of local government powers to authority.
81.112.110	Acquisition of existing system—Components.
81.112.120	Treasurer—Funds—Auditor—Bond.
81.112.130	General obligation bonds.
81.112.140	Revenue bonds.
81.112.150	Local improvement districts authorized—Special assessment bonds.
81.112.160	County assessor's duties.
81.112.170	Interim financing.
81.112.900	Section headings not part of law—1992 c 101.

81.112.901 Severability—1992 c 101.

81.112.902 Effective date—1992 c 101.

81.112.010 Findings—Intent. The legislature recognizes that existing transportation facilities in the central Puget Sound area are inadequate to address mobility needs of the area. The geography of the region, travel demand growth, and public resistance to new roadways combine to further necessitate the rapid development of alternative modes of travel.

The legislature finds that local governments have been effective in cooperatively planning a multicounty, high capacity transportation system. However, a continued multijurisdictional approach to funding, construction, and operation of a multicounty high capacity transportation system may impair the successful implementation of such a system.

The legislature finds that a single agency will be more effective than several local jurisdictions working collectively at planning, developing, operating, and funding a high capacity transportation system. The single agency's services must be carefully integrated and coordinated with public transportation services currently provided. As the single agency's services are established, any public transportation services currently provided that are duplicative should be eliminated. Further, the single agency must coordinate its activities with other agencies providing local and state roadway services, implementing comprehensive planning, and implementing transportation demand management programs and assist in developing infrastructure to support high capacity systems including but not limited to feeder systems, park and ride facilities, intermodal centers, and related roadway and operational facilities. Coordination can be best achieved through common governance, such as integrated governing boards.

It is therefore the policy of the state of Washington to empower counties in the state's most populous region to create a local agency for planning and implementing a high capacity transportation system within that region. The authorization for such an agency, except as specifically provided in this chapter, is not intended to limit the powers of existing transit agencies. [1992 c 101 § 1.]

81.112.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Authority" means a regional transit authority authorized under this chapter.

(2) "Board" means the board of a regional transit authority.

(3) "Service area" or "area" means the area included within the boundaries of a regional transit authority.

(4) "System" means a regional transit system authorized under this chapter and under the jurisdiction of a regional transit authority.

(5) "Facilities" means any lands, interest in land, air rights over lands, and improvements thereto including vessel terminals, and any equipment, vehicles, vessels, and other components necessary to support the system. [1992 c 101 § 2.]

81.112.030 Regional transit authority. Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to jurisdictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

(9) If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters. No single proposition may be submitted to the voters more than twice. The authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority. [1994 c 44 § 1; 1993 sp.s. c 23 § 62; 1992 c 101 § 3.]

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

81.112.040 Board appointments—Voting—Expenses. (1) The regional transit authority shall be governed by a board consisting of representatives appointed by the county executive and confirmed by the council or other legislative authority of each member county. Member-

ship shall be based on population from that portion of each county which lies within the service area. Board members shall be appointed initially on the basis of one for each one hundred forty-five thousand population within the county. Such appointments shall be made following consultation with city and town jurisdictions within the service area. In addition, the secretary of transportation or the secretary's designee shall serve as a member of the board and may have voting status with approval of a majority of the other members of the board. Only board members, not including alternates or designees, may cast votes.

Each member of the board, except the secretary of transportation or the secretary's designee, shall be:

(a) An elected official who serves on the legislative authority of a city or as mayor of a city within the boundaries of the authority;

(b) On the legislative authority of the county, if fifty percent of the population of the legislative official's district is within the authority boundaries; or

(c) A county executive from a member county within the authority boundaries.

When making appointments, each county executive shall ensure that representation on the board includes an elected city official representing the largest city in each county and assures proportional representation from other cities, and representation from unincorporated areas of each county within the service area. At least one-half of all appointees from each county shall serve on the governing authority of a public transportation system.

Members appointed from each county shall serve staggered four-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated.

The governing board shall be reconstituted, with regard to the number of representatives from each county, on a population basis, using the official office of financial management population estimates, five years after its initial formation and, at minimum, in the year following each official federal census. The board membership may be reduced, maintained, or expanded to reflect population changes but under no circumstances may the board membership exceed twenty-five.

(2) Major decisions of the authority shall require a favorable vote of two-thirds of the entire membership of the voting members. "Major decisions" include at least the following: System plan adoption and amendment; system phasing decisions; annual budget adoption; authorization of annexations; modification of board composition; and executive director employment.

(3) Each member of the board is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation as provided in RCW 43.03.250. [1994 c 109 § 1; 1992 c 101 § 4.]

81.112.050 Area included—Elections. (1) At the time of formation, the area to be included within the boundary of the authority shall be that area set forth in the system plan adopted by the joint regional policy committee. Prior to submitting the system and financing plan to the voters, the authority may make adjustments to the boundaries

as deemed appropriate but must assure that, to the extent possible, the boundaries: (a) Include the largest-population urban growth area designated by each county under chapter 36.70A RCW; and (b) follow election precinct boundaries. If a portion of any city is determined to be within the service area, the entire city must be included within the boundaries of the authority.

(2) After voters within the authority boundaries have approved the system and financing plan, elections to add areas contiguous to the authority boundaries may be called by resolution of the regional transit authority, after consultation with affected transit agencies and with the concurrence of the legislative authority of the city or town if the area is incorporated, or with the concurrence of the county legislative authority if the area is unincorporated. Only those areas that would benefit from the services provided by the authority may be included and services or projects proposed for the area must be consistent with the regional transportation plan. The election may include a single ballot proposition providing for annexation to the authority boundaries and imposition of the taxes at rates already imposed within the authority boundaries. [1992 c 101 § 5.]

81.112.060 Powers. An authority shall have the following powers:

(1) To establish offices, departments, boards, and commissions that are necessary to carry out the purposes of the authority, and to prescribe the functions, powers, and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the authority.

(3) To fix the salaries, wages, and other compensation of all officers and employees of the authority.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the authority. [1992 c 101 § 6.]

81.112.070 General powers. In addition to the powers specifically granted by this chapter an authority shall have all powers necessary to implement a high capacity transportation system and to develop revenues for system support. An authority may contract with the United States or any agency thereof, any state or agency thereof, any public transportation benefit area, any county, county transportation authority, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm, or corporation for: (1) The purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies; (2) the design, construction, or operation of high capacity transportation system facilities; or (3) the provision or receipt of services, facilities, or property rights to provide revenues for the system. An authority shall have the power to contract pursuant to RCW 39.33.050. In addition, an authority may contract with any governmental agency or with any private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased, or held by the other party and for the purpose of

planning, constructing, or operating any facility or performing any service that the authority may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any authority facilities is let to any private person, firm, or corporation, a general schedule of rental rates for equipment with or without operators applicable to all private certificated carriers shall be publicly posted, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications, and bid conditions as the board shall determine. This shall allow use of negotiated procurements. [1992 c 101 § 7.]

81.112.080 Additional powers—Acquisition of facilities—Disposal of property—Rates, tolls, fares, charges. An authority shall have the following powers in addition to the general powers granted by this chapter:

(1) To carry out the planning processes set forth in RCW 81.104.100;

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of high capacity transportation facilities and properties within authority boundaries including surface, underground, or overhead railways, tramways, busways, buses, bus sets, entrained and linked buses, ferries, or other means of local transportation except taxis, and including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger, vehicular, and vessel access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such high capacity transportation systems. When developing specifications for high capacity transportation system operating equipment, an authority shall take into account efforts to establish or sustain a domestic manufacturing capacity for such equipment. The right of eminent domain shall be exercised by an authority in the same manner and by the same procedure as or may be provided by law for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter. Public transportation facilities and properties which are owned by any city, county, county transportation authority, public transportation benefit area, or metropolitan municipal corporation may be acquired or used by an authority only with the consent of the agency owning such facilities. Such agencies are hereby authorized to convey or lease such facilities to an authority or to contract for their joint use on such terms as may be fixed by agreement between the agency and the authority.

The facilities and properties of an authority whose vehicles will operate primarily within the rights of way of public streets, roads, or highways, may be acquired, developed, and operated without the corridor and design hearings that are required by RCW 35.58.273 for mass transit facilities operating on a separate right of way;

(3) To dispose of any real or personal property acquired in connection with any authority function and that is no longer required for the purposes of the authority, in the same manner as provided for cities of the first class. When an

authority determines that a facility or any part thereof that has been acquired from any public agency without compensation is no longer required for authority purposes, but is required by the agency from which it was acquired, the authority shall by resolution transfer it to such agency;

(4) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users. [1992 c 101 § 8.]

81.112.090 Agreements with operators of high capacity transportation services. Except in accordance with an agreement made as provided in this section, upon the date an authority begins high capacity transportation service, no person or private corporation may operate a high capacity transportation service within the authority boundary with the exception of services owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

The authority and any person or corporation legally operating a high capacity transportation service wholly within or partly within and partly without the authority boundary on the date an authority begins high capacity transportation service may enter into an agreement under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such high capacity transportation service will be required to cease to operate within the authority boundary, the authority may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, an authority shall condemn such assets in the manner and by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with this chapter.

Wherever a privately owned public carrier operates wholly or partly within an authority boundary, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [1992 c 101 § 9.]

81.112.100 Transfer of local government powers to authority. An authority shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of high capacity transportation system facilities that are identified in the system plan developed pursuant to RCW 81.104.100 that any city, county, county transportation authority, metropolitan municipal corporation, or public transportation benefit area within the authority boundary has been previously empowered to exercise and such powers shall not thereafter be exercised by such agencies without the consent of the authority. Nothing in this chapter shall restrict development, construction, or operation of a personal rapid transit system by a city or county.

An authority may adopt, in whole or in part, and may complete, modify, or terminate any planning, environmental

review, or procurement processes related to the high capacity transportation system that had been commenced by a joint regional policy committee or a city, county, county transportation authority, metropolitan municipality, or public transportation benefit area prior to the formation of the authority. [1992 c 101 § 10.]

81.112.110 Acquisition of existing system—Components. If an authority acquires any existing components of a high capacity transportation system, it shall assume and observe all existing labor contracts relating to the transportation system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such transportation systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of the transportation system prior to such acquisition. At such times as may be required by such contracts, the authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. Facilities and equipment which are acquired after July 1, 1993, related to high capacity transportation services which are to be assumed by the authority as specifically identified in the adopted system plan shall be acquired by the authority in a manner consistent with RCW 81.112.070 through 81.112.100. [1992 c 101 § 11.]

81.112.120 Treasurer—Funds—Auditor—Bond. The board of an authority, by resolution, shall designate a person having experience in financial or fiscal matters as treasurer of the authority. The board may designate, with the concurrence of the treasurer, the treasurer of a county within which the authority is located. Such a treasurer shall possess all of the powers, responsibilities, and duties the county treasurer possesses for a public transportation benefit area authority related to investing surplus authority funds. The board 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 the board, by resolution, from time to time finds will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All authority funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the authority upon orders or vouchers approved by the board.

The treasurer shall establish a special fund, into which shall be paid all authority funds, and the treasurer shall maintain such special accounts as may be created by the authority into which shall be placed all money as the board may, by resolution, direct.

If the treasurer of the authority is the treasurer of a county, all authority funds shall be deposited with the county depository under the same restrictions, contracts, and security

as provided for county depositories. If the treasurer of the authority is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state that have qualified for insured deposits under any federal deposit insurance act as the board, by resolution, shall designate.

The authority may by resolution designate a person having experience in financial or fiscal matters, as the auditor of the authority. Such auditor shall possess all of the powers, responsibilities, and duties related to creating and maintaining funds, issuing warrants, and maintaining a record of receipts and disbursements.

The board may provide and require a reasonable bond of any other person handling moneys or securities of the authority, but the authority shall pay the premium on the bond. [1992 c 101 § 12.]

81.112.130 General obligation bonds. Notwithstanding RCW 39.36.020(1), an authority may at any time contract indebtedness or borrow money for authority purposes and may issue general obligation bonds in an amount not exceeding, together with any existing indebtedness of the authority not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the authority; and with the assent of three-fifths of the voters therein voting at an election called for that purpose, may contract indebtedness or borrow money for authority purposes and may issue general obligation bonds therefor, provided the total indebtedness of the authority shall not exceed five percent of the value of the taxable property therein. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1992 c 101 § 13.]

81.112.140 Revenue bonds. (1) An authority may issue revenue bonds to provide funds to carry out its authorized functions without submitting the matter to the voters of the authority. The authority shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the authority may obligate itself to pay such amounts of the gross revenue of the high capacity transportation system constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the authority shall determine and may obligate the authority to pay such amounts out of otherwise unpledged revenue that may be derived from the ownership, use, or operation of properties or facilities owned, used, or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes, or other sources of payment lawfully authorized for such purpose, as the authority shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such high capacity transportation system or any other revenue, fees, tolls, charges, tariffs, fares, special taxes, or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the authority.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1992 c 101 § 14.]

81.112.150 Local improvement districts authorized—Special assessment bonds. (1) An authority may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and assessments shall be made and collected pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.51, 35.53, and 35.54 RCW.

(2) The board shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the authority issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the authority has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the authority arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the authority has created. The authority issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by the authority for real property or property right donations made pursuant to RCW 47.14.030.

(4) The board may establish and pay moneys into a local improvement guaranty fund to guarantee special

assessment bonds issued by the authority. [1992 c 101 § 15.]

81.112.160 County assessor's duties. It shall be the duty of the assessor of each component county to certify annually to a regional transit authority the aggregate assessed valuation of all taxable property within the boundaries of the authority as the same appears from the last assessment roll of the county. [1992 c 101 § 16.]

81.112.170 Interim financing. A regional transit authority may apply for high capacity transportation account funds and for central Puget Sound account funds for high capacity transit planning and system development.

Transit agencies contained wholly or partly within a regional transit authority may make grants or loans to the authority for high capacity transportation planning and system development. [1992 c 101 § 17.]

81.112.900 Section headings not part of law—1992 c 101. Section headings as used in this act do not constitute any part of the law. [1992 c 101 § 33.]

81.112.901 Severability—1992 c 101. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 101 § 34.]

81.112.902 Effective date—1992 c 101. This act shall take effect July 1, 1992. [1992 c 101 § 35.]

Chapter 81.900 CONSTRUCTION

Sections

- 81.900.010 Continuation of existing law.
- 81.900.020 Title, chapter, section headings not part of law.
- 81.900.030 Invalidity of part of title not to affect remainder.
- 81.900.040 Repeals and saving.
- 81.900.050 Emergency—1961 c 14.

81.900.010 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. Formerly RCW 81.98.010.]

81.900.020 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. Formerly RCW 81.98.020.]

81.900.030 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. Formerly RCW 81.98.030.]

81.900.040 Repeals and saving. See 1961 c 14 § 81.98.040. Formerly RCW 81.98.040.

81.900.050 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. Formerly RCW 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 Local 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.
- 82.19 Litter tax.
- 82.21 Hazardous substance tax—Model toxics control act.
- 82.23A Petroleum products—Underground storage tank program funding.
- 82.23B Oil spill response 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.
- 82.32A Taxpayer rights and responsibilities.
- 82.33 Economic and revenue forecasts.
- 82.33A Economic climate council.
- 82.34 Pollution control facilities—Tax exemptions and credits.
- 82.35 Cogeneration facilities—Tax credits.
- 82.36 Motor vehicle fuel tax.
- 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.
- 82.47 Border area motor vehicle fuel and special fuel tax.
- 82.48 Aircraft excise tax.
- 82.49 Watercraft excise tax.
- 82.50 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.
- 82.63 Tax deferrals for high technology businesses.
- 82.64 Carbonated beverage tax.

- 82.65A Intermediate care facilities for the mentally retarded.
- 82.66 Tax deferrals for new thoroughbred race tracks.
- 82.80 Local option transportation taxes.
- 82.98 Construction.

Additional taxes, see titles pertaining to particular taxing authorities, e.g., counties, cities, school districts, public utility districts.

Expenditure limitations: Chapter 43.135 RCW.

Hotels, motels, special excise tax on charges for furnishing lodging: Chapters 67.28 and 67.40 RCW.

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—Rule-making authority.
- 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.

Apportionment factors (for school districts) to be based on current figures—Rules and regulations: RCW 28A.150.400.

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—Rule-making authority. The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through the department of revenue, hereinafter in chapter

26, Laws of 1967 ex. sess. 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 chapter 26, Laws of 1967 ex. sess. 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 as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature: PROVIDED, That the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, shall remain in force until such time as they may be revised or rescinded by the director;

(4) 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;

(5) 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;

(6) 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. [1995 c 403 § 106; 1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

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 chapter 26, Laws of 1967 ex. sess. 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.]

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.]

***Reviser's note:** RCW 82.04.325 expired December 31, 1992.

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.

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.
82.02.050	Impact fees—Intent—Limitations.
82.02.060	Impact fees—Local ordinances—Required provisions.
82.02.070	Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
82.02.080	Impact fees—Refunds.
82.02.090	Impact fees—Definitions.
82.02.100	Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW.
82.02.1001	Legislative fiscal committees—Report on impacts of manufacturers' tax exemption—Provision of data by agencies.

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. (*Effective until July 1, 1997.*) 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. Except as provided in RCW 82.02.050 through 82.02.090, 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 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. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is 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 benefitted 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.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

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. [1990

1st ex.s. c 17 § 42; 1988 c 179 § 6; 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.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

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.

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions. (Effective July 1, 1997.) 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. Except as provided in RCW 82.02.050 through 82.02.090, 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 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. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is 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 benefitted 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.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 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.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

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. The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), 66.24.210(2), 82.16.020(2), 82.27.020(5), and 82.29A.030(2) shall be seven percent. [1993 sp.s. c 25 § 107; 1993 c 492

§ 312; 1990 c 42 § 319. Prior: 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.

82.02.050 Impact fees—Intent—Limitations. (1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

(4) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town is required to adopt its development regulations under chapter 36.70A RCW, continued authorization to collect and expend impact fees shall be contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible. [1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

SEPA: RCW 43.21C.065.

82.02.060 Impact fees—Local ordinances—Required provisions. The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or prorable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

(3) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

(4) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(5) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

(6) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development;

(7) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies. [1990 1st ex.s. c 17 § 44.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals. (1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3) Impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the

appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [1990 1st ex.s. c 17 § 46.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.080 Impact fees—Refunds. (1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within six years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first class mail deposited with the United States postal service at the last known address of claimants.

The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. [1990 1st ex.s. c 17 § 47.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.090 Impact fees—Definitions. Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use

of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(5) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(6) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities in jurisdictions that are not part of a fire district.

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements. [1990 1st ex.s. c 17 § 48.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW. A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements. [1992 c 219 § 2.]

82.02.1001 Legislative fiscal committees—Report on impacts of manufacturers' tax exemption—Provision of data by agencies. The legislative fiscal committees shall report to the legislature by December 1, 1999, on the economic impacts of the manufacturers' tax exemption. This

report shall analyze employment and other relevant economic data from before and after the enactment of the tax exemptions authorized under chapter 3, Laws of 1995 1st sp. sess. and shall measure the effect on the creation or retention of family wage jobs and diversification of the state's economy. Analytic techniques may include, but not be limited to, comparisons of Washington to other states that did not enact business tax changes, comparisons across Washington counties based on usage of the tax exemptions, and comparisons across similar firms based on their use of the tax exemptions. In performing the analysis, the legislative fiscal committees shall consult with business and labor interests. The department or [of] revenue, the employment security department, and other agencies shall provide to the legislative fiscal committees such data as the legislative fiscal committees may request in performing the analysis required under this section. [1995 1st sp.s. c 3 § 15.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

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.
- 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.
- 82.03.070 Executive director, tax referees, clerk, assistants.
- 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 final findings and decisions.
- 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 or tax referees—Assistance.
- 82.03.160 Appeals to board—Formal hearings, powers of board or tax referees—Assistance.
- 82.03.170 Rules of practice and procedure.
- 82.03.180 Judicial review.
- 82.03.190 Appeal to board from denial of petition or notice of determination as to reduction or refund—Procedure.
- 82.03.200 Appeals from county board of equalization—Evidence submission in advance of hearing.

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 chapter 26, Laws of 1967 ex. sess. 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.]

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 [Title 82 RCW—page 8]

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 director, tax referees, clerk, assistants. The board may appoint, discharge and fix the compensation of an executive director, tax referees, a clerk, and such other clerical, professional and technical assistants as may be necessary. Tax referees shall not be subject to chapter 41.06 RCW. [1988 c 222 § 2; 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 final findings and decisions. The board shall maintain at its principal office a copy of its final findings and decisions. The findings and decisions shall be available for public inspection at the principal office of the board at all reasonable times. [1988 c 222 § 3; 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, if filed with the board of tax appeals within thirty days after the mailing of the order, 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 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, 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 mailing of the certification; 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.
- (6) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210.
- (7) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.
- (8) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.
- (9) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.
- (10) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.
- (11) Appeals pursuant to RCW 84.40.038(3). [1994 c 123 § 3; 1992 c 206 § 9; 1989 c 378 § 4; 1982 1st ex.s. c 46 § 6; 1977 ex.s. c 284 § 2; 1967 ex.s. c 26 § 42.]

Applicability—1994 c 123: See note following RCW 84.36.815.

Effective date—1992 c 206: See note following RCW 82.04.170.

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, That nothing shall prevent the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within twenty days from the date of the receipt of the notice of

appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: 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 34.05 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. [1988 c 222 § 4; 1982 1st ex.s. c 46 § 8; 1967 ex.s. c 26 § 43.]

82.03.150 Appeals to board—Informal hearings, powers of board or tax referees—Assistance. In all appeals involving an informal hearing, the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.05 RCW. The board, or its tax referees, 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. [1988 c 222 § 5; 1967 ex.s. c 26 § 44.]

82.03.160 Appeals to board—Formal hearings, powers of board or tax referees—Assistance. In all appeals involving a formal hearing the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW; and the board, and each member thereof, or its tax referees, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. The board, or its tax referees, 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 or its tax referees shall be presented only in open hearing. [1989 c 175 § 175; 1988 c 222 § 6; 1967 ex.s. c 26 § 45.]

Effective date—1989 c 175: See note following RCW 34.05.010.

82.03.170 Rules of practice and procedure. All proceedings, including both formal and informal hearings, before the board or any of its members or tax referees 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. [1988 c 222 § 7; 1967 ex.s. c 26 § 46.]

82.03.180 Judicial review. 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 34.05.510 through 34.05.598: 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 34.05.542 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). [1989 c 175 § 176; 1982 1st ex.s. c 46 § 9; 1967 ex.s. c 26 § 47.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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, 82.32.170, 82.34.110, or 82.49.060 may appeal, within thirty days after the mailing 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 the taxpayer 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. A copy of the notice of appeal shall be provided to the department within the time specified in the rules of practice and procedure prescribed by the board. However, if the notice of appeal relates to an application made to the department 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 34.05 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 thirty days from the date of its receipt of the notice of appeal, file with the board notice of its intention that the hearing be held pursuant to the administrative procedure act. [1989 c 378 § 5; 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.

82.03.200 Appeals from county board of equalization—Evidence submission in advance of hearing. In all

appeals taken pursuant to RCW 84.08.130 the assessor or taxpayer shall submit evidence of comparable sales to be used in a hearing to the board and to all parties at least ten business days in advance of such hearing. Failure to comply with the requirements set forth in this section shall be grounds for the board, upon objection, to continue the hearing or refuse to consider evidence not timely submitted. [1994 c 301 § 17.]

Chapter 82.04

BUSINESS AND OCCUPATION TAX

Sections

82.04.010	Introductory.
82.04.020	"Tax year," "taxable year."
82.04.030	"Person," "company."
82.04.035	"Plantation Christmas trees."
82.04.040	"Sale," "casual or isolated sale."
82.04.050	"Sale at retail," "retail sale."
82.04.055	"Selected business services."
82.04.060	"Sale at wholesale," "wholesale sale."
82.04.062	"Sale at wholesale," "sale at retail" excludes sale of precious metal bullion and monetized bullion—Computation of tax.
82.04.065	"Competitive telephone service," "network telephone service," "telephone service," "telephone business."
82.04.070	"Gross proceeds of sales."
82.04.080	"Gross income of the business."
82.04.090	"Value proceeding or accruing."
82.04.100	"Extractor."
82.04.110	"Manufacturer."
82.04.120	"To manufacture."
82.04.130	"Commercial or industrial use."
82.04.140	"Business."
82.04.150	"Engaging in business."
82.04.160	"Cash discount."
82.04.170	"Tuition fee."
82.04.180	"Successor."
82.04.190	"Consumer."
82.04.200	"In this state," "within this state."
82.04.210	"Byproduct."
82.04.212	"Retail store or outlet."
82.04.213	"Agricultural product"—"Farmer."
82.04.214	"Newspaper."
82.04.220	Business and occupation tax imposed.
82.04.2201	Temporary business and occupation surtaxes—July 1, 1993, through June 30, 1997.
82.04.230	Tax upon extractors.
82.04.240	Tax on manufacturers.
82.04.2403	Manufacturer tax not applicable to cleaning fish.
82.04.250	Tax on retailers.
82.04.255	Tax on real estate brokers.
82.04.260	Tax on buyers, wholesalers, manufacturers, and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals.
82.04.263	Tax on cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development.
82.04.270	Tax on wholesalers, distributors.
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—Periodical or magazine defined.
82.04.290	Tax on selected business services, financial businesses, or other business or service activities.
82.04.293	International investment management services—Definitions.

- 82.04.310 Exemptions—Public utilities.
- 82.04.315 Exemptions—International banking facilities.
- 82.04.320 Exemptions—Insurance business.
- 82.04.322 Exemptions—Health maintenance organization, health care service contractor, certified health plan.
- 82.04.324 Exemptions—Blood, bone, or tissue bank—Exceptions.
- 82.04.327 Exemptions—Adult family homes.
- 82.04.330 Exemptions—Farmers—Agriculture.
- 82.04.333 Exemptions—Small harvesters.
- 82.04.335 Exemptions—Agricultural fairs.
- 82.04.337 Exemptions—Amounts received by hop growers or dealers for processed hops shipped outside the state.
- 82.04.339 Exemptions—Day care provided by churches.
- 82.04.3395 Exemptions—Child care resource and referral services by nonprofit organizations.
- 82.04.340 Exemptions—Athletic exhibitions.
- 82.04.350 Exemptions—Racing.
- 82.04.355 Exemptions—Ride sharing.
- 82.04.360 Exemptions—Employees—Independent contractors—Booth renters.
- 82.04.365 Exemptions—Bazaar or rummage sales by nonprofit organization.
- 82.04.366 Exemptions—Auctions by public benefit nonprofit organization.
- 82.04.367 Exemptions—Nonprofit organizations that issue debt for student loans or that are guarantee agencies.
- 82.04.368 Exemptions—Nonprofit organizations—Credit and debt services.
- 82.04.370 Exemptions—Certain fraternal and beneficiary organizations.
- 82.04.380 Exemptions—Certain corporations furnishing aid and relief.
- 82.04.385 Exemptions—Operation of sheltered workshops.
- 82.04.390 Exemptions—Amounts derived from sale of real estate.
- 82.04.395 Exemptions—Certain materials printed in school district and educational service district printing facilities.
- 82.04.397 Exemptions—Certain materials printed in county, city, or town printing facilities.
- 82.04.399 Exemptions—Sales of academic transcripts.
- 82.04.405 Exemptions—Credit unions.
- 82.04.408 Exemptions—Housing finance commission.
- 82.04.410 Exemptions—Hatching eggs and poultry.
- 82.04.415 Exemptions—Sand, gravel and rock taken from county or city pits or quarries, processing and handling costs.
- 82.04.418 Exemptions—Grants by United States government to municipal corporations or political subdivisions.
- 82.04.419 Exemptions—County, city, town, school district, or fire district activity.
- 82.04.423 Exemptions—Sales by certain out-of-state persons to or through direct seller's representatives.
- 82.04.425 Exemptions—Accommodation sales.
- 82.04.427 Exemptions and credits—Pollution control facilities.
- 82.04.4271 Deductions—Membership fees and certain service fees by nonprofit youth organization.
- 82.04.4281 Deductions—Investments—Dividends from subsidiary corporations.
- 82.04.4282 Deductions—Fees, dues, charges.
- 82.04.4283 Deductions—Cash discount taken by purchaser.
- 82.04.4284 Deductions—Credit losses of accrual basis taxpayers.
- 82.04.4285 Deductions—Motor vehicle fuel taxes.
- 82.04.4286 Deductions—Nontaxable business.
- 82.04.4287 Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used.
- 82.04.4289 Exemption—Compensation for services to patients and attendant sales of prescription drugs by nonprofit kidney dialysis facilities, nursing homes, and homes for unwed mothers operated by religious or charitable organizations.
- 82.04.4291 Deductions—Compensation received by a political subdivision from another political subdivision for services taxable under RCW 82.04.290.
- 82.04.4292 Deductions—Interest on investments or loans secured by mortgages or deeds of trust.
- 82.04.4293 Deductions—Interest on obligations of the state, its political subdivisions, and municipal corporations.
- 82.04.4294 Deductions—Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives.
- 82.04.4295 Deductions—Manufacturing activities completed outside the United States.
- 82.04.4296 Deductions—Reimbursement for accommodation expenditures by funeral homes.
- 82.04.4297 Deductions—Compensation from public entities for health or social welfare services—Exception.
- 82.04.4298 Deductions—Repair, maintenance, replacement, etc., of residential structures and commonly held property—Eligible organizations.
- 82.04.431 "Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined.
- 82.04.432 Deductions—Municipal sewer service fees or charges.
- 82.04.4322 Deductions—Artistic or cultural organization—Compensation from United States, state, etc., for artistic or cultural exhibitions, performances, or programs.
- 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.
- 82.04.4326 Deductions—Artistic or cultural organizations—Tuition charges for attending artistic or cultural education programs.
- 82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities.
- 82.04.4328 "Artistic or cultural organization" defined.
- 82.04.4329 Deductions—Health insurance pool members—Deficit assessments.
- 82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce—Construction.
- 82.04.4331 Deductions—Insurance claims for state health care coverage.
- 82.04.4332 Deductions—Tuition fees of foreign degree-granting institutions.
- 82.04.4333 Credit—Job training services—Approval.
- 82.04.434 Credit—Public safety standards and testing.
- 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.
- 82.04.445 Credit for property taxes paid on business inventories—Falsification—Penalty and interest.
- 82.04.4451 Credit against tax due—Maximum credit.
- 82.04.4452 Credit—Research and development spending—Assessment report—Expiration of section.
- 82.04.4453 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature.
- 82.04.4454 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling.
- 82.04.4455 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Definitions.
- 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—Tax liability—Rules—Resale certificate defined.
- 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.

Housing authorities, tax exemption: Chapter 35.82 RCW.

Public utility districts, privilege taxes: Chapter 54.28 RCW.

82.04.010 Introductory. Unless the context clearly requires otherwise, the definitions set forth in the sections preceding RCW 82.04.220 apply throughout this chapter. [1996 c 93 § 4; 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, limited liability company, 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. [1995 c 318 § 1; 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—1995 c 318: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 318 § 12.]

Effective date—1963 ex.s. c 28: "This act shall take effect on July 1, 1963." [1963 ex.s. c 28 § 17.]

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 presents a resale certificate under RCW 82.04.470 and 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) of this subsection 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 (2) and (7) and 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 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) of this subsection 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 subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(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 services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(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.

(7) The term shall also not include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture, or to farmers for the purpose of producing for sale any agricultural product, 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.

(8) 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. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. [1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1. Prior: 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 1996 c 112 § 1 and by 1996 c 148 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1996 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." [1996 c 148 § 7.]

Effective date—1996 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date—1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

82.04.055 "Selected business services." (1) "Selected business services" means:

(a) Stenographic, secretarial, and clerical services.

(b) Computer services, including but not limited to computer programming, custom software modification, custom software installation, custom software maintenance, custom software repair, training in the use of custom software, computer systems design, and custom software update services.

(c) Data processing services, including but not limited to word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. Data processing services also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

(d) Information services, including but not limited to electronic data retrieval or research that entails furnishing financial or legal information, data or research, general or specialized news, or current information unless such news or current information is furnished to a newspaper publisher or to a radio or television station licensed by the federal communications commission.

(e) Legal, arbitration, and mediation services, including but not limited to paralegal services, legal research services, and court reporting services.

(f) Accounting, auditing, actuarial, bookkeeping, tax preparation, and similar services.

(g) Design services whether or not performed by persons licensed or certified, including but not limited to the following:

(i) Engineering services, including civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing;

(ii) Architectural services, including but not limited to: Structural or landscape design or architecture, interior design, building design, building program management, and space planning.

(h) Business consulting services. Business consulting services are those primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, nonprofit, or public organization, including but not limited to those in the following areas: Administrative management consulting, general management consulting, human resource consulting or training, management engineering consulting, management information systems consulting, manufacturing management consulting, marketing consulting, operations research consulting, personnel management consulting, physical distribution consulting, site location consulting, economic consulting, motel, hotel, and resort consulting, restaurant consulting, government affairs consulting, and lobbying.

(i) Business management services, including but not limited to administrative management, business management, and office management, but not including property management or property leasing, motel, hotel, and resort management, or automobile parking management.

(j) Protective services, including but not limited to detective agency services and private investigating services, armored car services, guard or protective services, lie detection or polygraph services, and security system, burglar, or fire alarm monitoring and maintenance services.

(k) Public relations or advertising services, including but not limited to layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision, but excluding services provided as part of broadcast or print advertising.

(1) Aerial and land surveying, geological consulting, and real estate appraising.

(2) Subsection (1) of this section notwithstanding, the term "selected business services" does not include:

(a) The provision of either permanent or temporary employees.

(b) Services provided by a public benefit nonprofit organization, as defined in RCW 82.04.366, to the state of Washington, its political subdivisions, municipal corporations, or quasi-municipal corporations.

(c) Services related to the identification, investigation, or cleanup arising out of the release or threatened release of hazardous substances when the services are remedial or response actions performed under federal or state law, or when the services are performed to determine if a release of hazardous substances has occurred or is likely to occur.

(d) Services provided to or performed for, on behalf of, or for the benefit of a collective investment fund such as: (i) A mutual fund or other regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, as amended; (ii) an "investment company" as that term is used in section 3(a) of the Investment Company Act of 1940 as well as an entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 except for the section 3(c)(1) or (11) exemptions, or except that it is a foreign investment company organized under laws of a foreign country; (iii) an "employee benefit plan," which includes any plan, trust, commingled employee benefit trusts, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as

(1996 Ed.)

amended, or similar plan maintained by state or local governments, or plans, trusts, or custodial arrangements established to self-insure benefits required by federal, state, or local law; (iv) a fund maintained by a tax exempt organization as defined in section 501(c)(3) or 509(a) of the Internal Revenue Code of 1986, as amended, for operating, quasi-endowment, or endowment purposes; or (v) funds that are established for the benefit of such tax exempt organization such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts.

(e) Research or experimental services eligible for expense treatment under section 174 of the Internal Revenue Code of 1986, as amended.

(f) Financial services provided by a financial institution. The term "financial institution" means a corporation, partnership, or other business organization chartered under Title 30, 31, 32, or 33 RCW, or under the National Bank Act, as amended, the Homeowners Loan Act, as amended, or the Federal Credit Union Act, as amended, or a holding company of any such business organization that is subject to the Bank Holding Company Act, as amended, or the Homeowners Loan Act, as amended, or a subsidiary or affiliate wholly owned or controlled by one or more financial institutions, as well as a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act, as amended. The term "financial services" means those activities authorized by the laws cited in this subsection (2)(f) and includes services such as mortgage servicing, contract collection servicing, finance leasing, and services provided in a fiduciary capacity to a trust or estate. [1993 sp.s. c 25 § 201.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

82.04.060 "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a), 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. [1996 c 148 § 3; 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.]

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

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. [1989 c 302 § 201. Prior: 1989 c 302 § 101; 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.]

(1996 Ed.)

Finding, purpose—1989 c 302: "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of *Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in *Part II of this act.

(2) The purpose of *Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the *Washington Water Power* decision." [1989 c 302 § 1.]

***Reviser's note:** For "Part" division see 1989 c 302.

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 and includes educational programs that such educational institution co-sponsors with a nonprofit organization, as defined by the internal revenue code Sec. 501(c)(3), if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) 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. [1993 sp.s. c 18 § 37; 1993 c 181 § 13; 1992 c 206 § 1; 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: This section was amended by 1993 c 181 § 13 and by 1993 sp.s. c 18 § 37, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1993 sp.s. c 18: See note following RCW 28B.10.265.

Effective dates—1992 c 206: "This act shall take effect July 1, 1992, except sections 7 and 8 of this act which shall take effect January 1, 1993, and sections 9 through 12 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992." [1992 c 206 § 16.]

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)(a) Any person engaged in any business activity taxable under RCW 82.04.290; (b) 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; and (c) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), 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;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year; and

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer." [1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 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.]

Reviser's note: This section was amended by 1996 c 112 § 2, 1996 c 148 § 4, and by 1996 c 173 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—1996 c 173: See note following RCW 82.08.02565.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 112: See note following RCW 82.04.050.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

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.]

82.04.213 "Agricultural product"—"Farmer." (1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets.

(2) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. [1993 sp.s. c 25 § 302.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

82.04.214 "Newspaper." "Newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind. [1994 c 22 § 1; 1993 sp.s. c 25 § 304.]

Retroactive application—1994 c 22: "This act shall apply retroactively to July 1, 1993." [1994 c 22 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.]

82.04.2201 Temporary business and occupation surtaxes—July 1, 1993, through June 30, 1997. There is levied and shall be collected for the period July 1, 1993, through June 30, 1997, 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 82.04.280 and 82.04.290 (3) and (4), except RCW 82.04.250(1), 82.04.260(15), and 82.04.263, an additional tax equal to 4.5 percent multiplied by the tax payable under those sections.

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. [1996 c 112 § 4; 1995 c 229 § 2; 1994 sp.s. c 10 § 1; 1993 sp.s. c 25 § 204.]

Effective date—1996 c 112: See note following RCW 82.04.050.

Effective date—1995 c 229: See note following RCW 82.04.293.

Effective date—1994 sp.s. c 10: "This act shall take effect January 1, 1995." [1994 sp.s. c 10 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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 0.484 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. [1993 sp.s. c 25 § 101; 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.]

Severability—1993 sp.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." [1993 sp.s. c 25 § 1002.]

Effective dates—1993 sp.s. c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993, except:

(1) Sections 901 and 902 of this act take effect immediately [May 28, 1993].

(2) Sections 601 through 603 of this act take effect January 1, 1994." [1993 sp.s. c 25 § 1003.]

Part headings, captions not law—1993 sp.s. c 25: "Part headings and captions as used in this act constitute no part of the law." [1993 sp.s. c 25 § 1004.]

82.04.240 Tax on manufacturers. Upon every person except persons taxable under RCW 82.04.260 (2), (3), (4), (5), (7), (8), or (9) 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 0.484 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. [1993 sp.s. c 25 § 102; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.] "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.]

82.04.2403 Manufacturer tax not applicable to cleaning fish. The tax imposed by RCW 82.04.240 does not apply to cleaning fish. "Cleaning fish" means the removal of the head, fins, or viscera from fresh fish without further processing, other than freezing. [1994 c 167 § 1.]

Effective date—1994 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 167 § 3.]

82.04.250 Tax on retailers. (1) Upon every person except persons taxable under RCW 82.04.260(8) or subsection (2) of this section 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 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that 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 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 0.484 percent. [1993 sp.s. c 25 § 103; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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 1.75 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. [1996 c 1 § 1; 1993 sp.s. c 25 § 202; 1985 c 32 § 2; 1983 2nd ex.s. c 3 § 1; 1983 c 9 § 1; 1970 ex.s. c 65 § 3.]

Effective date—1996 c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect January 1, 1996." [1996 c 1 § 5.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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 buyers, wholesalers, manufacturers, and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals. (1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, 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 0.011 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, canola into canola oil, canola meal, or canola byproducts, 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, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 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 0.275 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 0.138 percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; 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, processed, or dehydrated multiplied by the rate of 0.33 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.

(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 0.484 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 0.138 percent.

(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 0.275 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 0.275 percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; 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 0.275 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 0.363 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 0.363 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 3.3 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 0.55 percent.

(15) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900. [1996 c 148 § 2; 1996 c 115 § 1. Prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2;

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.]

Reviser's note: This section was amended by 1996 c 115 § 1 and by 1996 c 148 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 115: "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

Effective date—1995 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

Effective date—1995 2nd sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Effective dates—1991 c 272: See RCW 81.108.901.

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.

Low-level waste disposal rate regulation study: RCW 81.04.520.

82.04.263 Tax on cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development. Upon every person engaging within this state in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; as to such persons the amount of the tax with respect to such business shall be equal to the value of the gross income of the business multiplied by the rate of 0.471 percent.

For the purposes of this chapter, "cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development" means the activities of handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel; spent nuclear fuel conditioning; removal of contamination in soils and ground water; decontamination and decommissioning of facilities; and activities integral and necessary to the direct performance of cleanup. [1996 c 112 § 3.]

Effective date—1996 c 112: See note following RCW 82.04.050.

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 0.484 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. 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 0.484 percent of the value of the article so distributed as of the time of such distribution. 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. Delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets. [1994 c 124 § 2; 1993 sp.s. c 25 § 105; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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—Periodical or magazine 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 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 0.484 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.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regular-

ly at stated intervals at least once every three months, including any supplement or special edition of the publication. [1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 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.]

Retroactive application—1994 c 112 § 1: "Section 1 of this act shall apply retroactively to July 1, 1993." [1994 c 112 § 5.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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 selected business services, financial businesses, or other business or service activities. (1) Upon every person engaging within this state in the business of providing selected business services other than or in addition to those enumerated in RCW 82.04.250 or 82.04.270; 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 2.0 percent.

(2) Upon every person engaging within this state in banking, loan, security, investment management, investment advisory, or other financial businesses, other than or in addition to those enumerated in subsection (3) of this section; 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 1.6 percent.

(3) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(4) 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, and subsections (1), (2), and (3) of this section; 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 1.75 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. [1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 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.]

Effective date—1996 c 1: See note following RCW 82.04.255.

Effective date—1995 c 229: See note following RCW 82.04.293.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.

82.04.293 International investment management services—Definitions. For purposes of RCW 82.04.290(3):

(1) A person is engaged in the business of providing international investment management services, if:

(a) Such person is engaged primarily in the business of providing investment management services; and

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following: (i) Persons or collective investment funds residing outside the United States; or (ii) persons or collective investment funds with at least ten percent of their investments located outside the United States.

(2) "Investment management services" means investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services.

(3) "Collective investment fund" includes:

(a) A mutual fund or other regulated investment company, as defined in section 851(a) of the internal revenue code of 1986, as amended;

(b) An "investment company," as that term is used in section 3(a) of the investment company act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in section 3(c)(1) or (11);

(c) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the internal revenue code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

(d) A fund maintained by a tax-exempt organization, as defined in section 501(c)(3) of the internal revenue code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

(e) Funds that are established for the benefit of such tax-exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

(f) Collective investment funds similar to those described in (a) through (e) of this subsection created under the laws of a foreign jurisdiction.

(4) Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States. [1995 c 229 § 1.]

Effective date—1995 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 229 § 4.]

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 including amounts derived from the sale of commodities for which a deduction is allowed under RCW 82.16.050. [1989 c 302 § 202; 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.]

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

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.]

82.04.322 Exemptions—Health maintenance organization, health care service contractor, certified health plan. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. [1993 c 492 § 303.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

82.04.324 Exemptions—Blood, bone, or tissue bank—Exceptions. (1) As used in this section:

(a) "Blood" includes human whole blood, plasma, blood derivatives, and related products.

(b) "Bone" includes human bone, bone marrow, and related products.

(c) "Tissue" includes human musculoskeletal tissue, musculoskeletal tissue derivatives, and related products.

(d) "Blood, bone, or tissue bank" means an organization exempt from federal income tax under section 501(c)(3) of the federal internal revenue code, organized solely for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a blood, tissue, or bone bank for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(f) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(g) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(h) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(2) This chapter does not apply to amounts received by blood, bone, or tissue banks, to the extent the amounts are exempt from federal income tax. [1995 2nd sp.s. c 9 § 3.]

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

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—Farmers—Agriculture. This chapter shall not apply to any farmer that sells any agricultural product at wholesale. This exemption shall not apply to any person selling such products at retail.

This chapter shall also not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program. [1993 sp.s. c 25 § 305; 1988 c 253 § 2; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.

82.04.333 Exemptions—Small harvesters. This chapter shall not apply to the gross receipts or value of products proceeding or accruing from timber harvested by a person who is a small harvester as defined in RCW 84.33.073 and whose value of products, gross proceeds of sales, or gross income of the business is less than one hundred thousand dollars per tax year. [1990 c 141 § 1.]

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 ware-

houser from taxation under this chapter on amounts charged for processing or warehousing. [1987 c 495 § 1.]

82.04.339 Exemptions—Day care provided by churches. This chapter shall not apply to amounts derived by a church that is exempt from property tax under RCW 84.36.020 from the provision of care for children for periods of less than twenty-four hours. [1992 c 81 § 1.]

82.04.395 Exemptions—Child care resource and referral services by nonprofit organizations. This chapter does not apply to nonprofit organizations in respect to amounts derived from the provision of child care resource and referral services. [1995 2nd sp.s. c 11 § 3.]

Effective date—1995 2nd sp.s. c 11: See note following RCW 82.04.365.

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 boxing commission. [1988 c 19 § 4; 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 boxing commission" was redesignated the "state professional athletic commission" by 1989 c 127, and was subsequently abolished and powers and duties transferred to the department of licensing pursuant to 1993 c 278.

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.]

***Reviser's note:** RCW 46.74.010 was amended by 1996 c 244 § 2 changing the term "ride sharing for the elderly and the handicapped" to "ride sharing for persons with special transportation needs."

Severability—1979 c 111: See note following RCW 46.74.010.

82.04.360 Exemptions—Employees—Independent contractors—Booth renters. (1) This chapter shall not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee shall include those persons that are defined in section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991.

(2) A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter. [1991 c 324 § 19; 1991 c 275 § 2; 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.]

Reviser's note: This section was amended by 1991 c 275 § 2 and by 1991 c 324 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 c 324: See RCW 18.16.910.

Finding—Intent—1991 c 275: "(1) The legislature finds:

(a) The existing state policy is to exempt employees from the business and occupation tax.

(b) It has been difficult to distinguish, for business and occupation tax purposes, between independent contractors and employees who are in the business of selling life insurance. The tests commonly used by the department of revenue to determine tax status have not successfully differentiated employees from independent contractors when applied to the life insurance industry.

(2) The intent of this act is to apply federal tax law and rules to distinguish between employees and independent contractors for business and occupation tax purposes, solely for the unique business of selling life insurance." [1991 c 275 § 1.]

Effective date—1991 c 275: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 275 § 3.]

82.04.365 Exemptions—Bazaar or rummage sales by nonprofit organization. (1) This chapter does not apply to the first twenty thousand dollars received in a calendar year 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.

(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. [1995 2nd sp.s. c 11 § 1; 1979 ex.s. c 196 § 7.]

Effective date—1995 2nd sp.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 11 § 4.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

82.04.366 Exemptions—Auctions by public benefit nonprofit organization. (1) This chapter does not apply to amounts received by a public benefit nonprofit organization

from sales at an auction that the organization conducts or participates in, if:

(a) The organization does not conduct or participate in more than one auction per year; and

(b) The auction does not extend over a period of more than two days.

(2) As used in this section, "public benefit nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, as in effect on January 1, 1991, or a subsequent date provided by the director by rule consistent with the purpose of this section. [1991 c 51 § 1.]

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.]

82.04.368 Exemptions—Nonprofit organizations—Credit and debt services. This chapter does not apply to nonprofit organizations in respect to amounts derived from provision of the following services:

(1) Presenting individual and community credit education programs including credit and debt counseling;

(2) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(3) Establishing and administering negotiated repayment programs for debtors; or

(4) Providing advice or assistance to a debtor with regard to subsection (1), (2), or (3) of this section. [1993 c 390 § 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 persons with developmental disabilities at nonprofit group training homes as defined by chapter 71A.22 RCW or to the business activities of nonprofit organizations from the operation of sheltered workshops. For the purposes of this section, "the operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed 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. [1988 c 176 § 915; 1988 c 13 § 1; 1972 ex.s. c 134 § 1; 1970 ex.s. c 81 § 3.]

Reviser's note: This section was amended by 1988 c 13 § 1 and by 1988 c 176 § 915, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1988 c 176: See RCW 71A.10.900.

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.

82.04.399 Exemptions—Sales of academic transcripts. This chapter does not apply to amounts received from sales of academic transcripts by educational institutions. [1996 c 272 § 1.]

Effective date—1996 c 272: "This act shall take effect July 1, 1996." [1996 c 272 § 4.]

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.

82.04.418 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 regular-

ly 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—Fees, dues, charges. In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general

public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section 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 under this section. [1994 c 124 § 3; 1989 c 392 § 1; 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.

Sales and use tax exemption for materials and supplies used in packing horticultural products: RCW 82.08.0311 and 82.12.0311.

82.04.4289 Exemption—Compensation for services to patients and attendant sales of prescription drugs by nonprofit kidney dialysis facilities, nursing homes, and homes for unwed mothers operated by religious or charitable organizations. This chapter does not apply to 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 kidney dialysis facility operated as a nonprofit corporation, 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. [1993 c 492 § 305; 1981 c 178 § 2; 1980 c 37 § 10. Formerly RCW 82.04.430(9).]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Intent—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—Exception. 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, except deductions are not allowed under this section for amounts that are received under an employee benefit plan. [1988 c 67 § 1; 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

(l) 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,

(1996 Ed.)

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.

82.04.4331 Deductions—Insurance claims for state health care coverage. In computing tax, insurers as defined by RCW 48.01.050, may deduct from the measure of tax amounts paid out for claims incurred before July 1, 1990, for covered health services under medical and dental coverage purchased under chapter 41.05 RCW. [1988 c 107 § 33.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

82.04.4332 Deductions—Tuition fees of foreign degree-granting institutions. An approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW is considered an educational institution for the purpose of the deduction of tuition fees provided by RCW 82.04.170 in those instances where it is recognized as an organization exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c). [1993 c 181 § 10.]

82.04.4333 Credit—Job training services—Approval. (1) There may be credited against the tax imposed by this chapter, the value of state-approved, employer-provided or sponsored job training services designed to enhance the job-related performance of employees, for those businesses eligible for a tax deferral under chapter 82.60 RCW.

(2) The value of the state-approved, job training services provided by the employer to the employee, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to an amount equal to twenty percent of the value of the state-approved, job training services determined under subsection (2) of this section. The total credits allowed under this section for a business shall not exceed five thousand dollars per calendar year.

(4) Prior to claiming the credit under this section, the business must obtain approval of the proposed job training service from the employment security department. The employer's request for approval must include a description of the proposed job training service, how the job training

will enhance the employee's performance, and the cost of the proposed job training.

(5) This section only applies to training in respect to eligible business projects for which an application is approved on or after January 1, 1996. [1996 c 1 § 4.]

Effective date—1996 c 1: See note following RCW 82.04.255.

82.04.434 Credit—Public safety standards and testing. (1) There may be credited against the tax imposed by this chapter, the value of services and information relating to setting of standards and testing for public safety provided to the state of Washington, without charge, at the state's request, by a nonprofit corporation that is:

(a) Organized and operated for the purpose of setting standards and testing for public safety; and

(b) Exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(c) Organized with no direct or indirect industry affiliation.

(2) The value of the services and information requested by the state and provided to the state, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to the amount of tax imposed by this chapter. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of one year. [1991 c 13 § 1.]

Effective date—1991 c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 13 § 2.]

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 chapter 257, Laws of 1969 ex. sess. [1971 ex.s. c 299 § 6; 1969 ex.s. c 257 § 1; 1967 ex.s. c 89 § 1; 1965 ex.s. c 173 § 26.]

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, 82.04.270, or 82.04.260(7) with respect to selling products in this state 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. [1994 c 124 § 4; 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.]

Retroactive application—1994 c 124: "Except as otherwise provided in section 6 of this act, section 4 of this act applies retrospectively to all tax reporting periods on or after June 23, 1987." [1994 c 124 § 7.]

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 chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 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, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act extends [extend] 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, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 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." [1994 c 124 § 5; 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, chapter 3, Laws of 1987 2nd ex. sess. and section 4 of this act shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credits." [1994 c 124 § 6; 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.

82.04.4451 Credit against tax due—Maximum credit. (1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. The maximum credit for a taxpayer for a reporting period is thirty-five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero. [1994 sp.s. c 2 § 1.]

Effective date—1994 sp.s. c 2: "This act shall take effect on July 1, 1994." [1994 sp.s. c 2 § 5.]

Application to reporting periods—1994 sp.s. c 2 § 1: "Section 1 of this act applies to the entire period of reporting periods ending after July 1, 1994." [1994 sp.s. c 2 § 6.]

82.04.4452 Credit—Research and development spending—Assessment report—Expiration of section. (1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit is equal to the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development, multiplied by the rate of 0.515 percent in the case of a nonprofit corporation or nonprofit association engaging within this state in research and development, and 2.5 percent for every other person.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, shall be taken against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year shall not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) Any person taking the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year shall be liable for payment of the additional taxes represented by the amount of credit taken together with interest, but not penalties. Interest shall be due at the rate provided for delinquent excise taxes retroactively to the date

the credit was taken until the taxes are paid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be taken by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6) Any person claiming the credit, and any person assigning a credit as provided in subsection (3) of this section, shall file an affidavit form prescribed by the department which shall include the amount of the credit claimed, an estimate of the anticipated qualified research and development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(7) A person claiming the credit shall agree to supply the department with information necessary to measure the results of the tax credit program for qualified research and development expenditures.

(8) The department shall use the information required under subsection (7) of this section to perform three assessments on the tax credit program authorized under this section. The assessments will take place in 1997, 2000, and 2003. The department shall prepare reports on each assessment and deliver their reports by September 1, 1997, September 1, 2000, and September 1, 2003. The assessments shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(9) For the purpose of this section:

(a) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(b) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

(c) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(d) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(10) This section shall expire December 31, 2004. [1994 sp.s. c 5 § 2.]

Findings—Effective date—1994 sp.s. c 5: See RCW 82.63.005 and 82.63.900.

82.04.4453 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature. (Expires December 31, 2000.) (1) Employers in this state who are taxable under this chapter and provide financial incentives to their employees for ride sharing, for using public transportation, or for using nonmotorized commuting before June 30, 2000, shall be allowed a credit for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, or for using nonmotorized commuting, not to exceed sixty dollars per employee per year. The credit shall be equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. For ride sharing in vehicles carrying two persons, the credit shall be equal to the amount paid to or on behalf of each employee multiplied by thirty percent, but may not exceed sixty dollars per employee per year. The credit may not exceed the amount of tax that would otherwise be due under this chapter.

(2) Application for tax credit under this chapter may only be made in the form and manner prescribed in rules adopted by the department.

(3) The credit shall be taken not more than once quarterly and not less than once annually against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees for ride sharing, for using public transportation, or for using nonmotorized commuting and must be claimed by the due date of the last tax return for the calendar year in which the payment is made.

(4) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(5) On the first of April, July, October, and January of each year, the state treasurer based upon information provided by the department shall deposit a sum equal to the dollar amount of the credit provided under subsection (1) of this section from the air pollution control account to the general fund.

(6) The commute trip reduction task force shall determine the effectiveness of this tax credit as part of its ongoing evaluation of the commute trip reduction law and report no later than December 1, 1997, to the legislative transportation committee and to the fiscal committees of the house of representatives and the senate. The report shall include information on the amount of tax credits claimed to date and recommendations on future funding for the tax credit program.

(7) Any person who knowingly makes a false statement of a material fact in the application for a credit under subsection (1) of this section is guilty of a gross misdemeanor.

(8) A person may not receive credit for amounts paid to or on behalf of the same employee under both this section and RCW 82.16.048. [1996 c 128 § 1; 1994 c 270 § 2.]

Effective date—Expiration date—1996 c 128: "(1) This act takes effect July 1, 1996.

(2) This act expires December 31, 2000." [1996 c 128 § 7.]

Finding—1994 c 270: "Transportation demand strategies that reduce the number of vehicles on Washington state's highways, roads, and streets, and provide attractive and effective alternatives to single-occupancy travel can improve ambient air quality, conserve fossil fuels, and forestall the need for capital improvements to the state's transportation system. The legislature has required many public and private employers in the state's largest counties to implement transportation demand management programs to reduce the number of single-occupant vehicle travelers during the morning and evening rush hours. The legislature finds that additional transportation demand management strategies are necessary to mitigate the adverse social, environmental, and economic effects of automobile dependency and traffic congestion. While expensive capital improvements, including dedicated busways and commuter rail systems, may be necessary to improve the region's mobility, they are only part of the solution. All public and private entities that attract single-occupant vehicle drivers must develop imaginative and cost-effective ways to encourage walking, bicycling, carpooling, vanpooling, bus riding, and telecommuting. It is the intent of the legislature to revise those portions of state law that inhibit the application of imaginative solutions to the state's transportation mobility problems and to encourage many more public and private employers to adopt effective transportation demand management strategies." [1994 c 270 § 1.]

Expiration date—1994 c 270: "This act shall expire December 31, 2000." [1996 c 128 § 6; 1994 c 270 § 6.]

82.04.4454 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling. (Expires December 31, 2000.) (1) The department shall keep a running total of all credits granted under RCW 82.04.4453 and 82.16.048 during each calendar year, and shall disallow any credits that would cause the tabulation for any calendar year to exceed one million five hundred thousand dollars.

(2) No employer shall be eligible for tax credits under RCW 82.04.4453 and 82.16.048 in excess of one hundred thousand dollars in any calendar year.

(3) No employer shall be eligible for tax credits under RCW 82.04.4453 in excess of the amount of tax that would otherwise be due under this chapter.

(4) No portion of an application for credit disallowed under this section may be carried back or carried forward. [1996 c 128 § 2; 1994 c 270 § 3.]

Effective date—Expiration date—1996 c 128: See note following RCW 82.04.4453.

Finding—Expiration date—1994 c 270: See notes following RCW 82.04.4453.

82.04.4455 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Definitions. (Expires December 31, 2000.) The definitions set forth in this section apply to RCW 82.04.4453, 82.04.4454, 82.16.048, and 82.16.049 unless the context clearly requires otherwise.

(1) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(2) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Ride sharing" means the same as "commuter ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries. [1996 c 128 § 5.]

Effective date—Expiration date—1996 c 128: See note following RCW 82.04.4453.

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—Tax liability—Rules—Resale certificate defined. (1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) Resale certificates shall be valid for a period of four years from the date the certificate is provided to the seller.

(4) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(5) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

- (a) The name and address of the buyer;
- (b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to [be] registered;
- (c) The type of business engaged in;
- (d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

- (e) The date on which the certificate was provided;
- (f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

- (g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

- (h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

- (i) The signature of the authorized individual; and

- (j) The name of the seller. [1993 sp.s. c 25 § 701; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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

Sections

- 82.08.010 Definitions.
- 82.08.011 Retail car rental—Definition.
- 82.08.020 Tax imposed—Retail sales—Retail car rental.
- 82.08.0201 Rental cars—Estimate of tax revenue.
- 82.08.0251 Exemptions—Casual and isolated sales.
- 82.08.0252 Exemptions—Sales by persons taxable under chapter 82.16 RCW.
- 82.08.02525 Exemptions—Sale of copied public records by state and local agencies.
- 82.08.0253 Exemptions—Sale and distribution of newspapers.
- 82.08.02535 Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising.
- 82.08.02537 Exemptions—Sales of academic transcripts.
- 82.08.0254 Exemptions—Nontaxable sales.
- 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.
- 82.08.0256 Exemptions—Sale of the operating property of a public utility to the state or a political subdivision.
- 82.08.02565 Exemptions—Sales of manufacturing and research and development machinery and equipment—Labor and services for installation—Exemption certificate—Rules.
- 82.08.02566 Exemptions—Sales of materials used in designing and developing aircraft parts, auxiliary equipment, and aircraft modification—Limitations on gross sales, yearly exemption.
- 82.08.02567 Exemptions—Sales of, or labor and services for installation of, machinery and equipment used in generating electricity using wind or sun energy—Exemption certificate—Rules—Expiration of section.
- 82.08.02568 Exemptions—Sales of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.
- 82.08.02569 Exemptions—Sales of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.
- 82.08.0257 Exemptions—Auction sales of tangible personal property used in farming.
- 82.08.02571 Exemptions—Auctions by public benefit nonprofit organization.
- 82.08.02572 Exemptions—Bazaar or rummage sales by nonprofit organization.
- 82.08.0258 Exemptions—Sales to federal corporations providing aid and relief.
- 82.08.0259 Exemptions—Sales of purebred livestock for breeding—Cattle and milk cows.
- 82.08.026 Exemptions—Sales of natural or manufactured gas.
- 82.08.0261 Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce.
- 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 or airplanes sold to United States government—Components thereof and of motor vehicles or trailers used for constructing, repairing, cleaning, etc.—Labor and services for constructing, repairing, cleaning, etc.
- 82.08.0263 Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce.
- 82.08.0264 Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state.
- 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.
- 82.08.0266 Exemptions—Sales of watercraft to nonresidents for use outside the state.
- 82.08.02665 Exemptions—Sales of watercraft, vessels to residents of foreign countries.
- 82.08.0267 Exemptions—Sales of poultry for producing poultry and poultry products for sale.
- 82.08.0268 Exemptions—Sales of machinery and implements for farming to nonresidents for use outside the state.
- 82.08.0269 Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state.
- 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.
- 82.08.0272 Exemptions—Sales of semen for artificial insemination of livestock.
- 82.08.0273 Exemptions—Sales to nonresidents of tangible personal property for use outside the state—Proof of nonresident status—Penalties.
- 82.08.0274 Exemptions—Sales of form lumber to person engaged in constructing, repairing, etc., structures for consumers.
- 82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—Rules.
- 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.
- 82.08.0276 Exemptions—Sales of wearing apparel for use only as a sample for display for sale.
- 82.08.0277 Exemptions—Sales of pollen.
- 82.08.0278 Exemptions—Sales between political subdivisions resulting from annexation or incorporation.
- 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.
- 82.08.02795 Exemptions—Sales to free hospitals.
- 82.08.02805 Exemptions—Sales to blood, bone, or tissue bank—Exceptions.
- 82.08.02806 Exemptions—Sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing.
- 82.08.0281 Exemptions—Sales of prescription drugs.
- 82.08.0282 Exemptions—Sales of returnable containers for beverages and foods.
- 82.08.0283 Exemptions—Sales of insulin, prosthetic and orthotic devices, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen.
- 82.08.0285 Exemptions—Sales of ferry vessels to the state or local governmental units—Components thereof—Labor and service charges.

- 82.08.0287 Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles.
- 82.08.0288 Exemptions—Lease of certain irrigation equipment.
- 82.08.0289 Exemptions—Certain network telephone service.
- 82.08.0291 Exemptions—Sales of amusement and recreation services or personal services by nonprofit youth organization—Local government physical fitness classes.
- 82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section.
- 82.08.02917 Youth in crisis—Definition—Limited purpose.
- 82.08.0293 Exemptions—Sales of food products for human consumption.
- 82.08.0294 Exemptions—Sales of feed for cultivating or raising fish for sale.
- 82.08.0295 Exemptions—Lease amounts and repurchase amount for certain property under sale/leaseback agreement.
- 82.08.0296 Exemptions—Sales of feed consumed by livestock at a public livestock market.
- 82.08.0297 Exemptions—Sales of food purchased with food stamp coupons.
- 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.
- 82.08.0299 Exemptions—Emergency lodging for homeless persons—Conditions.
- 82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.
- 82.08.0311 Exemptions—Sales of materials and supplies used in packing horticultural products.
- 82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions.
- 82.08.033 Exemptions—Sales of used mobile homes or rental or lease of mobile homes.
- 82.08.034 Exemptions—Sales of used floating homes or rental or lease of used floating homes.
- 82.08.035 Exemption for pollution control facilities.
- 82.08.036 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.
- 82.08.037 Credits and refunds—Debts deductible as worthless.
- 82.08.040 Consignee, factor, bailee, auctioneer deemed seller.
- 82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties.
- 82.08.055 Advertisement of price.
- 82.08.060 Collection of tax—Methods and schedules.
- 82.08.065 Collection of tax and fee on mobile homes by county auditors or director of licensing—Remittance.
- 82.08.080 Vending machine and other sales.
- 82.08.090 Installment sales and leases.
- 82.08.100 Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless.
- 82.08.110 Sales from vehicles.
- 82.08.120 Refunding or rebating of tax by seller prohibited—Penalty.
- 82.08.130 Resale certificate—Purchase and resale—Rules.
- 82.08.140 Administration.
- 82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection.
- 82.08.160 Remittance of tax—Liquor excise tax fund created.
- 82.08.170 Apportionment and distribution from liquor excise tax fund.
- 82.08.180 Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance.

Community college capital improvements bond redemption fund of 1972—Tax receipts in: RCW 28B.56.100.

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

Excise tax on real estate transfers: Chapters 82.45 and 82.46 RCW.

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.

82.08.011 Retail car rental—Definition. For purposes of this chapter, "retail car rental" means renting a rental car, as defined in RCW 46.04.465, to a consumer. [1992 c 194 § 2.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

82.08.020 Tax imposed—Retail sales—Retail car rental. (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) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. Ninety-one percent of the revenue collected under this subsection shall be deposited and distributed in the same manner as motor vehicle excise tax revenue collected under RCW 82.44.020(1). Nine percent of the revenue collected under this subsection shall be deposited in the transportation fund and distributed in the same manner as motor vehicle excise tax revenue collected under RCW 82.44.020(2).

(3) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

(4) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020. [1992 c 194 § 9; 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.]

Legislative intent—1992 c 194: "The legislature intends to exempt rental cars from state and local motor vehicle excise taxes, and to impose additional sales and use taxes in lieu thereof. These additional sales and use taxes are intended to provide as much revenue to the funds currently receiving motor vehicle excise tax revenue, including the transportation funds and the general fund, as each fund would have received if the motor vehicle excise tax exemptions had not been enacted. Revenues from these additional sales and use taxes are intended to be distributed in the same manner as the motor vehicle excise tax revenues they replace." [1992 c 194 § 4.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

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:** "Substitute Senate Bill No. 2778" failed to become law.

Manufacturers, study: 1994 c 66.

82.08.0201 Rental cars—Estimate of tax revenue. Before January 1, 1994, and January 1 of each odd-numbered year thereafter:

The department of licensing, with the assistance of the department of revenue, shall provide the office of financial management and the fiscal committees of the legislature with an updated estimate of the amount of revenue attributable to the taxes imposed in RCW 82.08.020(2), and the amount of revenue not collected as a result of RCW 82.44.023. [1992 c 194 § 10.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

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.

82.08.02525 Exemptions—Sale of copied public records by state and local agencies. The tax levied by RCW 82.08.020 shall not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.17.020, that are copied under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [1996 c 63 § 1.]

Effective date—1996 c 63: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 63 § 3.]

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.

82.08.02535 Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising. The tax levied by RCW 82.08.020 shall not apply to the sales and distribution of magazines or periodicals by subscription for the purposes of fund-raising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit

of boys and girls nineteen years and younger. [1995 2nd sp.s. c 8 § 1.]

Effective date—1995 2nd sp.s. c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 8 § 2.]

82.08.02537 Exemptions—Sales of academic transcripts. The tax levied by RCW 82.08.020 shall not apply to sales of academic transcripts by educational institutions. [1996 c 272 § 2.]

Effective date—1996 c 272: See note following RCW 82.04.399.

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 by 1983 c 108 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—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.

82.08.02565 Exemptions—Sales of manufacturing and research and development machinery and equipment—Labor and services for installation—Exemption certificate—Rules. (1) The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation or research and development operation.

(b) "Machinery and equipment" does not include:

(i) Hand tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. The manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the finished product leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire. [1996 c 247 § 2; 1996 c 173 § 3; 1995 1st sp.s. c 3 § 2.]

Reviser's note: This section was amended by 1996 c 173 § 3 and by 1996 c 247 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Intent—1996 c 173: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to allow a sales tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment, and a sales and use tax exemption for repair and replacement parts with a useful life of one year or more." [1996 c 173 § 1.]

Findings—1995 1st sp.s. c 3: "The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in our state's private sector;

(2) The state's private sector must be encouraged to commit to continuous improvement of process, products, and services and to deliver high-quality, high-value products through technological innovations and high-performance work organizations;

(3) The state's opportunities for increased economic dealings with other states and nations of the world are dependent on supporting and attracting a diverse, stable, and competitive economic base of private sector employers;

(4) The state's current policy of applying its sales and use taxes to machinery, equipment, and installation labor used in manufacturing, research and development, and other activities has placed our state's private sector at a competitive disadvantage with other states and serves as a significant disincentive to the continuous improvement of products, technology, and

modernization necessary for the preservation, stabilization, and expansion of employment and to ensure a stable economy; and

(5) It is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses, that the state of Washington provide tax incentives to entities making a commitment to sites and operations in this state." [1995 1st sp.s. c 3 § 1.]

Effective date—1995 1st sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 3 § 16.]

82.08.02566 Exemptions—Sales of materials used in designing and developing aircraft parts, auxiliary equipment, and aircraft modification—Limitations on gross sales, yearly exemption. The tax levied by RCW 82.08.020 shall not apply to sales of materials used in designing and developing aircraft parts, auxiliary equipment, and aircraft modification whether from enterprise funds or on a contract or fee basis for a taxpayer with gross sales of less than twenty million dollars per year. This exemption may not exceed one hundred thousand dollars for a taxpayer in a year. [1996 c 247 § 4.]

Findings—Intent—1996 c 247: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to include machinery and equipment used for research and development with potential manufacturing applications." [1996 c 247 § 1.]

82.08.02567 Exemptions—Sales of, or labor and services for installation of, machinery and equipment used in generating electricity using wind or sun energy—Exemption certificate—Rules—Expiration of section. (1) The tax levied by RCW 82.08.020 shall not apply to sales of machinery and equipment used directly in generating electricity using the wind or sun energy as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than two hundred kilowatts of electricity and provides the seller with an exemption certificate in a form and manner prescribed by the department by rule, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02567:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using the wind or sun energy as the principal source of power;

(b) "Machinery and equipment" does not include: (i) Hand tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts

that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(c) Machinery and equipment is "used directly" in generating electricity by wind or solar power if it provides any part of the process that captures the energy of the wind or sun, converts that energy to electricity, and transforms or transmits that electricity for entry into electric transmission and distribution systems.

(3) This section expires June 30, 2005. [1996 c 166 § 1.]

Effective date—1996 c 166: "This act shall take effect July 1, 1996." [1996 c 166 § 3.]

82.08.02568 Exemptions—Sales of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. The tax levied by RCW 82.08.020 shall not apply to sales of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. [1996 c 170 § 1.]

Effective date—1996 c 170: "This act shall take effect July 1, 1996." [1996 c 170 § 3.]

82.08.02569 Exemptions—Sales of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory. The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property to a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996. [1996 c 113 § 1.]

Effective date—1996 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 113 § 3.]

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.

82.08.02571 Exemptions—Auctions by public benefit nonprofit organization. (1) The tax levied by RCW 82.08.020 does not apply to sales made by a public benefit nonprofit organization at an auction that the organization conducts or participates in, if:

(a) The organization does not conduct or participate in more than one auction per year; and

(b) The auction does not extend over a period of more than two days.

(2) As used in this section, "public benefit nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, as in effect on January 1, 1991, or a subsequent date provided by the director by rule consistent with the purpose of this section. [1991 c 51 § 2. Formerly RCW 82.08.0290.]

82.08.02572 Exemptions—Bazaar or rummage sales by nonprofit organization. The tax levied by RCW 82.08.020 does not apply to sales made by a nonprofit organization if the gross income from the sales is exempt under RCW 82.04.365. [1995 2nd sp.s. c 11 § 2.]

Effective date—1995 2nd sp.s. c 11: See note following RCW 82.04.365.

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.

82.08.026 Exemptions—Sales of natural or manufactured gas. The tax levied by RCW 82.08.020 shall not apply to sales of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 8; 1989 c 384 § 4.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

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 or airplanes sold to United States government—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 or airplanes sold to the United States government; 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. [1994 c 43 § 1; 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. [1995 c 63 § 1; 1980 c 37 § 30. Formerly RCW 82.08.030(12).]

Effective date—1995 c 63: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 63 § 3.]

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.

82.08.0265 Exemptions—Sales of watercraft, vessels to residents of foreign countries. The tax levied by RCW 82.08.020 does not apply to sales of vessels to residents of foreign countries for use outside of this state, even though delivery is made within this state, but only if (1) the vessel will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification as provided by and filed with the department of revenue and signed by the purchaser or the purchaser's agent establishes the fact that the purchaser is a resident of a foreign country and that the vessel is for use outside of this state. One copy of the exemption certificate is to be filed with the department of revenue and a duplicate is to be retained by the dealer.

As used in this section, "vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. [1993 c 119 § 1.]

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 noncontiguous 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—Proof of nonresident status—Penalties. (1) 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 (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and 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 (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as herein provided.

(b) Acceptable proof of a nonresident person's status shall include one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax shall be guilty of perjury. Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, shall be guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(b) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, shall be personally liable for the amount of tax due. Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent shall be guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor shall be liable for any penalties and interest assessable under chapter 82.32 RCW.

[1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 §.1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

Effective date—1988 c 96: "This act shall take effect July 1, 1989." [1988 c 96 § 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.

82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—Rules. (1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures, but only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five years from the date the housing is approved for occupation.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) For purposes of this section and RCW 82.12.02685:

(a) "Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;

(b) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010; and

(c) "Agricultural employee housing" means all facilities provided by the employer for housing the employer's agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.54.110. "Agricultural employee housing" does not include housing regularly provided on a commercial basis to

the general public that is provided to agricultural employees on the same terms and conditions as it is provided to the general public. [1996 c 117 § 1.]

Effective date—1996 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 117 § 3.]

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 nonresidents 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.

82.08.02795 Exemptions—Sales to free hospitals. (1) The tax levied by RCW 82.08.020 shall not apply to sales to free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals. (2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital. [1993 c 205 § 1.]

Effective date—1993 c 205: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 6, 1993]." [1993 c 205 § 3.]

82.08.02805 Exemptions—Sales to blood, bone, or tissue bank—Exceptions. The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a blood, bone, or tissue bank. The definitions in RCW 82.04.324 apply to this section. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [1995 2nd sp.s. c 9 § 4.]

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

82.08.02806 Exemptions—Sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing. The tax levied by RCW 82.08.020 shall not apply to sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes. [1996 c 141 § 1.]

Effective date—1996 c 141: "This act shall take effect July 1, 1996." [1996 c 141 § 3.]

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, or for use for family planning purposes, including the prevention of conception, supplied:

(1) By a family planning clinic that is under contract with the department of health to provide family planning services; or

(2) Under the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions; or

(3) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist; or

(4) 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

(5) By 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. [1993 sp.s. c 25 § 308; 1980 c 37 § 46. Formerly RCW 82.08.030(28).]

Finding—1993 sp.s. c 25: "The legislature finds that prevention is a significant element in the reduction of health care costs. The legislature further finds that taxing some physician prescriptions and not others is unfair to patients. It is, therefore, the intent of the legislature to remove the taxes from prescriptions issued for family planning purposes." [1993 sp.s. c 25 § 307.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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, medicines used in treatment by a naturopath, 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; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. [1996 c 162 § 1; 1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

Effective date—1996 c 162: "This act shall take effect July 1, 1996." [1996 c 162 § 3.]

Finding—Intent—1991 c 250: "(1) The legislature finds:

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

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.

82.08.0287 Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles. The tax imposed by this chapter shall not apply to sales of passenger motor vehicles which are to be used for commuter ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the ride-sharing vehicles are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section. If used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner of one of these vehicles shall notify the department of revenue upon termination of primary use of the vehicle as a ride-sharing vehicle and is liable for the tax imposed by this chapter.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program. [1996 c 244 § 4; 1995 c 274 § 2; 1993 c 488 § 2; 1980 c 166 § 1.]

Finding—1993 c 488: "The legislature finds that ride sharing and vanpools are the fastest growing transportation choice because of their flexibility and cost-effectiveness. Ride sharing and vanpools represent an effective means for local jurisdictions, transit agencies, and the private sector to assist in addressing the requirements of the Commute Trip Reduction Act, the Growth Management Act, the Americans with Disabilities Act, and the Clean Air Act." [1993 c 488 § 1.]

Annual recertification rule—Report—1993 c 488: "The department shall adopt by rule a process requiring annual recertification upon renewal for vehicles registered under RCW 46.16.023 to discourage abuse of tax exemptions under RCW 82.08.0287, 82.12.0282, and 82.44.015. The department of licensing in consultation with the department of transportation shall submit a report to the legislative transportation committee and the house and senate standing committees on transportation by July 1, 1996, assessing the effectiveness of the department of licensing at limiting tax exemptions to bona fide ride-sharing vehicles." [1993 c 488 § 6.]

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.]

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 or personal services by nonprofit youth organization—Local government physical fitness classes. The tax imposed by RCW 82.08.020 shall not apply to the sale of amusement and recreation services, or personal services specified in *RCW 82.04.050(3)(h), by a nonprofit youth organization, as defined in RCW 82.04.4271, to

members of the organization; nor shall the tax apply to physical fitness classes provided by a local government. [1994 c 85 § 1; 1981 c 74 § 2.]

***Reviser's note:** RCW 82.04.050 was amended by 1996 c 148 § 1, changing subsection (3)(h) to subsection (3)(g).

Effective date—1994 c 85: "This act shall take effect July 1, 1994." [1994 c 85 § 2.]

82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section. The tax levied by RCW 82.08.020 shall not apply to sales to health or social welfare organizations, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. This section shall expire July 1, 1997. [1995 c 346 § 1.]

Effective date—1995 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 13, 1995]." [1995 c 346 § 4.]

82.08.02917 Youth in crisis—Definition—Limited purpose. For the purposes of RCW 82.08.02915 and 82.12.02915, "youth in crisis" means any youth under eighteen years of age who is either: Homeless; a runaway from the home of a parent, guardian, or legal custodian; abused; neglected; abandoned by a parent, guardian, or legal custodian; or suffering from a substance abuse or mental disorder. [1995 c 346 § 3.]

Effective date—1995 c 346: See note following RCW 82.08.02915.

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.

(2) The exemption of "food products" provided for in subsection (1) of this section shall not apply: (a) 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 (b)

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, or (c) to a food product, when sold by the retail vendor, which by law must be handled on the vendor's premises by a person with a food and beverage service worker's permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home-delivered pizzas or meals, and salad bars but excluding:

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish mongers, butchers, or meat wrappers;

(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(iii) Bakeries which only sell baked goods;

(iv) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or

(v) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food products" provided in this section shall apply to food products which are furnished, prepared, or served as meals:

(a) 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

(b) 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.

(4) 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. [1988 c 103 § 1; 1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

Effective date—1988 c 103: "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, 1988." [1988 c 103 § 4.]

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 repurchase 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.]

82.08.0299 Exemptions—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 82.08.020 shall not apply to emergency lodging provided for homeless persons for a period of less than thirty

consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 1.]

Effective date—1988 c 61: "This act shall take effect July 1, 1988." [1988 c 61 § 4.]

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.

82.08.0311 Exemptions—Sales of materials and supplies used in packing horticultural products. The tax levied by RCW 82.08.020 shall not apply to sales of materials and supplies directly used in the packing of fresh perishable horticultural products by any person entitled to a deduction under RCW 82.04.4287 either as an agent or an independent contractor. [1988 c 68 § 1.]

82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions. (1) As used in this section:

(a) "Production equipment" means the following when used in motion picture or video production or postproduction: Grip and lighting equipment, cameras, camera mounts including tripods, jib arms, steadicams, and other camera mounts, cranes, dollies, generators, helicopter mounts, helicopters rented for motion picture or video production, walkie talkies, vans and trucks specifically equipped for motion picture or video production, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, teleprompters, sound recording equipment, and editorial equipment.

(b) "Production services" means motion picture and video processing, printing, editing, duplicating, animation, graphics, special effects, negative cutting, conversions to other formats or media, stock footage, sound mixing, rerecording, sound sweetening, sound looping, sound effects, and automatic dialog replacement.

(c) "Motion picture or video production business" means a person engaged in the production of motion pictures and video tapes for exhibition, sale, or for broadcast by a person other than the person producing the motion picture or video tape.

(2) The tax levied by RCW 82.08.020 does not apply to the rental of production equipment, or the sale of production services, to a motion picture or video production business.

(3) The exemption provided for in this section shall not apply to rental of production equipment, or the sale of production services, to a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [1995 2nd sp.s. c 5 § 1.]

Effective date—1995 2nd sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 5 § 3.]

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.

82.08.036 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined. The tax levied by RCW 82.08.020 shall not apply to consideration: (1) Received as core deposits or credits in a retail or wholesale sale; or (2) received or collected upon the sale of a new replacement vehicle tire as a fee imposed under RCW 70.95.510. For purposes of this section, the term "core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for the purpose of recycling or remanufacturing. [1989 c 431 § 45.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

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 or her 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 or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer in good faith a properly executed resale certificate under RCW 82.04.470.

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 twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax. [1993 sp.s. c 25 § 704; 1992 c 206 § 2; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1992 c 206: See note following RCW 82.04.170.

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 and fee 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 and the fee 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. [1991 c 327 § 5; 1990 c 171 § 8; 1987 c 89 § 1.]

Effective date—1990 c 171 §§ 6, 7, 8: See note following RCW 82.45.090.

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

(1996 Ed.)

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.

82.08.130 Resale certificate—Purchase and resale—Rules. If a buyer normally is engaged in both consuming and reselling certain types of articles of tangible personal property and is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a resale certificate for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a resale certificate that are used by the buyer and remit the sales tax on the articles to the department.

A buyer who pays a tax on all purchases and subsequently resells an article at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles were purchased, the date of the purchase, the type of articles, the amount of the purchase, and the tax that was paid. The department shall provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later sold at wholesale without intervening use by the buyer. [1993 sp.s. c 25 § 702.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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 taxes for specific purposes—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 fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven 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. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to class H licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to class H licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to class H licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits or strong beer in the original package.

(8) 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.

(9) As used in this section, the terms, "spirits," "strong beer," and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [1994 sp.s. c 7 § 903 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 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.]

Contingent partial referendum—1994 sp.s. c 7 § 901-909: See note following RCW 66.24.210.

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

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

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.]

82.08.180 Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the counties, cities, and towns are entitled under RCW 82.08.170 if the counties, cities, or towns are found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 36.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Chapter 82.12

USE TAX

Sections

- 82.12.010 Definitions.
- 82.12.020 Use tax imposed.
- 82.12.022 Natural or manufactured gas—Use tax imposed—Exemption.
- 82.12.023 Natural or manufactured gas, exempt from use tax imposed by RCW 82.12.020.
- 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.
- 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.
- 82.12.02525 Exemptions—Sale of copied public records by state and local agencies.
- 82.12.0253 Exemptions—Use of tangible personal property taxable under chapter 82.16 RCW.
- 82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—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.
- 82.12.02545 Exemption—Use of naval aircraft training equipment transferred due to base closure.
- 82.12.0255 Exemptions—Nontaxable tangible personal property.
- 82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions.
- 82.12.02565 Exemptions—Use of manufacturing and research and development machinery and equipment—Exemption certificate prescribed by department—Annual summary.
- 82.12.02566 Exemptions—Use of materials used in designing and developing aircraft parts, auxiliary equipment, and aircraft modification—Limitations on gross sales, yearly exemption.
- 82.12.02567 Exemptions—Use of machinery and equipment used in generating electricity using wind or sun energy—Exemption certificate—Annual summary—Expiration of section.
- 82.12.02568 Exemptions—Use of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.

- 82.12.02569 Exemptions—Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.
- 82.12.0257 Exemptions—Use of tangible personal property of the operating property of a public utility by state or political subdivision.
- 82.12.0258 Exemptions—Use of tangible personal property previously used in farming and purchased from farmer at auction.
- 82.12.0259 Exemptions—Use of tangible personal property by federal corporations providing aid and relief.
- 82.12.02595 Exemption—Use of donated tangible personal property by nonprofit organization or governmental entity.
- 82.12.0261 Exemptions—Use of purebred livestock for breeding—Cattle and milk cows.
- 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.
- 82.12.0264 Exemptions—Use of dual-controlled motor vehicles by school for driver training.
- 82.12.0265 Exemptions—Use by bailee of tangible personal property consumed in research, development, etc., activities.
- 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.
- 82.12.02685 Exemptions—Use of tangible personal property related to agricultural employee housing.
- 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.
- 82.12.0273 Exemptions—Use of pollen.
- 82.12.0274 Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation.
- 82.12.02745 Exemptions—Use by free hospitals of certain items.
- 82.12.02747 Exemptions—Use by blood, bone, or tissue bank—Exceptions.
- 82.12.02748 Exemptions—Use of human blood, tissue, organs, bodies, or body parts for medical research or quality control testing.
- 82.12.0275 Exemptions—Use of prescription drugs.
- 82.12.0276 Exemptions—Use of returnable containers for beverages and foods.
- 82.12.0277 Exemptions—Use of insulin, prosthetic and orthotic devices, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen.
- 82.12.0279 Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof.
- 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.
- 82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section.
- 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.
- 82.12.0311 Exemptions—Use of materials and supplies in packing horticultural products.
- 82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions.
- 82.12.033 Exemption—Use of certain used mobile homes.
- 82.12.034 Exemption—Use of used floating homes.
- 82.12.0345 Exemptions—Use of newspapers.
- 82.12.0347 Exemptions—Use of academic transcripts.
- 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.
- 82.12.038 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.
- 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)(a) "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 as the department of revenue may prescribe.

(b) 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 as the department of revenue may prescribe. 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 as the department of revenue may prescribe.

(c) 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 one hundred eighty 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 (a) of this subsection.

(d) 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.

(e) 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: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) 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. [1994 c 93 § 1. Prior: 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.]

Effective date—1994 c 93: "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

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. (1) 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 (2) or (7), or any amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a).

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050(3)(a) and 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.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service 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 or service from the taxes imposed by such chapters.

(4) 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. [1996 c 148 § 5; 1994 c 93 § 2; 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.]

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1994 c 93: See note following RCW 82.12.010.

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.

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) 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 public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(6) The use tax hereby imposed shall be paid by the consumer to the department.

(7) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

(8) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [1989 c 124 § 9; 1989 c 384 § 3.]

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Effective date—1989 c 384: "This act shall take effect July 1, 1990." [1989 c 384 § 7.]

82.12.023 Natural or manufactured gas, exempt from use tax imposed by RCW 82.12.020. The tax levied by RCW 82.12.020 shall not apply in respect to the use of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 10; 1989 c 384 § 5.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

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.

82.12.02525 Exemptions—Sale of copied public records by state and local agencies. The provisions of this chapter shall not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.17.020, that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [1996 c 63 § 2.]

Effective date—1996 c 63: See note following RCW 82.08.02525.

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 state's territorial waters—Components—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; 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. [1995 c 63 § 2; 1980 c 37 § 54. Formerly RCW 82.12.030(4).]

Effective date—1995 c 63: See note following RCW 82.08.0263.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02545 Exemption—Use of naval aircraft training equipment transferred due to base closure. The provisions of this chapter shall not apply in respect to the use of naval aircraft training equipment transferred to Washington state from another naval installation in another state as a result of the base closure act, P.L. 101-510, as amended by P.L. 102-311, 102-484, 103-160, 103-337, and 103-421. [1995 c 128 § 1.]

Effective date—1995 c 128: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 20, 1995]." [1995 c 128 § 2.]

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 under 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.

82.12.02565 Exemptions—Use of manufacturing and research and development machinery and equipment—Exemption certificate prescribed by department—Annual summary. The provisions of this chapter shall not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, but only when the user provides the department with:

(1) An exemption certificate in a form and manner prescribed by the department within sixty days of the first use of the machinery and equipment in this state; or

(2) An annual summary listing the machinery and equipment by January 31 of the year following the calendar year in which the machinery and equipment is first used in this state. [1996 c 247 § 3; 1995 1st sp.s. c 3 § 3.]

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.12.02566 Exemptions—Use of materials used in designing and developing aircraft parts, auxiliary equipment, and aircraft modification—Limitations on gross sales, yearly exemption. The provisions of this chapter shall not apply with respect to the use of materials used in designing and developing aircraft parts, auxiliary equipment, and aircraft modification whether from enterprise funds or on a contract or fee basis for a taxpayer with gross sales of less than twenty million dollars per year. This exemption may not exceed one hundred thousand dollars for a taxpayer in a year. [1996 c 247 § 5.]

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

82.12.02567 Exemptions—Use of machinery and equipment used in generating electricity using wind or sun energy—Exemption certificate—Annual summary—Expiration of section. (1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using the wind or sun as the principal source of power, but only when the user provides the department with:

(a) An exemption certificate in a form and manner prescribed by the department within sixty days of the first use of such machinery and equipment in this state; or

(b) An annual summary listing the machinery and equipment by January 31st of the year following the calendar

year in which the machinery and equipment is first used in this state.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, 2005. [1996 c 166 § 2.]

Effective date—1996 c 166: See note following RCW 82.08.02567.

82.12.02568 Exemptions—Use of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. The provisions of this chapter shall not apply in respect to the use of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. [1996 c 170 § 2.]

Effective date—1996 c 170: See note following RCW 82.08.02568.

82.12.02569 Exemptions—Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory. The provisions of this chapter shall not apply in respect to the use of tangible personal property by a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996. [1996 c 113 § 2.]

Effective date—1996 c 113: See note following RCW 82.08.02569.

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.

82.12.02595 Exemption—Use of donated tangible personal property by nonprofit organization or governmental entity. This chapter shall not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity. [1995 c 201 § 1.]

Effective date—1995 c 201: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 201 § 2.]

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.

82.12.02685 Exemptions—Use of tangible personal property related to agricultural employee housing. (1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an

ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five years from the date the housing is approved for occupation.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) The definitions in RCW 82.08.02745(5) apply to this section. [1996 c 117 § 2.]

Effective date—1996 c 117: See note following RCW 82.08.02745.

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.

82.12.02745 Exemptions—Use by free hospitals of certain items. (1) The provisions of this chapter shall not apply in respect to the use by free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital. [1993 c 205 § 2.]

Effective date—1993 c 205: See note following RCW 82.08.02795.

82.12.02747 Exemptions—Use by blood, bone, or tissue bank—Exceptions. The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a blood, bone, or tissue bank. The definitions in RCW 82.04.324 apply to this section. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [1995 2nd sp.s. c 9 § 5.]

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

82.12.02748 Exemptions—Use of human blood, tissue, organs, bodies, or body parts for medical research or quality control testing. The provisions of this chapter shall not apply in respect to the use of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes. [1996 c 141 § 2.]

Effective date—1996 c 141: See note following RCW 82.08.02806.

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, or for use for family planning purposes, including the prevention of conception, supplied:

(1) By a family planning clinic that is under contract with the department of health to provide family planning services; or

(2) Under the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions; or

(3) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist; or

(4) 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

(5) By 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. [1993 sp.s. c 25 § 309; 1980 c 37 § 73. Formerly RCW 82.12.030(23).]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Finding—1993 sp.s. c 25: See note following RCW 82.08.0281.

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, medicines used in treatment by a naturopath, 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; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. [1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Effective date—1996 c 162: See note following RCW 82.08.0283.

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

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.

82.12.0282 Exemptions—Use of vans as ride-sharing vehicles. The tax imposed by this chapter shall not apply with respect to the use of passenger motor vehicles used as ride-sharing vehicles, as defined in *RCW 46.74.010(3), by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing, as defined in RCW 46.74.010(1), by not less than four persons including the driver when at least two of those persons are confined to wheelchairs when riding, or passenger motor vehicles where the primary usage is for ride-sharing for the elderly and the handicapped, as defined in **RCW 46.74.010(2), if the vehicles are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section. If used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner of one of these vehicles shall notify the department of revenue upon termination of primary use of the vehicle as a ride-sharing vehicle and is liable for the tax imposed by this chapter.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program. [1996 c 88 § 4; 1993 c 488 § 4; 1980 c 166 § 2.]

Reviser's note: *(1) RCW 46.74.010 was amended by 1996 c 244 § 2, deleting subsection (3).

** (2) RCW 46.74.010 was amended by 1996 c 244 § 2 changing the term "ride sharing for the elderly and the handicapped" to "ride sharing for persons with special transportation needs."

Construction—1996 c 88: "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 or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1996 c 88 § 5.]

Severability—1996 c 88: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 88 § 6.]

Effective date—1996 c 88: "This act shall take effect July 1, 1996." [1996 c 88 § 7.]

Finding—Annual recertification rule—Report—1993 c 488: See notes following RCW 82.08.0287.

Severability—1980 c 166: See note 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.

82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section. The provisions of this chapter shall not apply in respect to the use of any item acquired by a health or social welfare organization, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. This section shall expire July 1, 1997. [1995 c 346 § 2.]

Effective date—1995 c 346: See note following RCW 82.08.02915.
Youth in crisis—Definition—Limited purpose: RCW 82.08.02917.

82.12.0293 Exemptions—Use of food products for human consumption. (1) 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 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.

(2) The exemption of "food products" provided for in subsection (1) of this section shall not apply: (a) 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 (b) 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, or (c) to a food product, when sold by the retail vendor, which by law must be handled on the vendor's premises by a person with a food and beverage service worker's permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home-delivered pizzas or meals, and salad bars but excluding:

(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish mongers, butchers, or meat wrappers;

(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(iii) Bakeries which only sell baked goods;

(iv) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or

(v) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food products" provided in this section shall apply to food products which are furnished, prepared, or served as meals:

(a) 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

(b) 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. [1988 c 103 § 2; 1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

Effective date—1988 c 103: See note following RCW 82.08.0293.

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 repurchase 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.

82.12.0311 Exemptions—Use of materials and supplies in packing horticultural products. The provisions of this chapter shall not apply with respect to the use of materials and supplies directly used in the packing of fresh perishable horticultural products by any person entitled to a deduction under RCW 82.04.4287 either as an agent or an independent contractor. [1988 c 68 § 2.]

82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions. (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state.

(2) As used in this section, "production equipment" and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [1995 2nd sp.s. c 5 § 2.]

Effective date—1995 2nd sp.s. c 5: See note following RCW 82.08.0315.

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.]

82.12.0345 Exemptions—Use of newspapers. The tax imposed by RCW 82.12.020 shall not apply in respect to the use of newspapers. [1994 c 124 § 11.]

82.12.0347 Exemptions—Use of academic transcripts. The provisions of this chapter shall not apply in respect to the use of academic transcripts. [1996 c 272 § 3.]

Effective date—1996 c 272: See note following RCW 82.04.399.

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, or services taxable under RCW 82.04.050(3)(a), 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. [1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

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.

82.12.038 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined. The provisions of this chapter shall not apply: (1) To the value of core deposits or credits in a retail or wholesale sale; or (2) to the fees imposed under RCW 70.95.510 upon the sale of a new replacement vehicle tire. For purposes of this section, the term "core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for the purpose of recycling or remanufacturing. [1989 c 431 § 46.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

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 § 8370-33; 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. (*Effective until January 1, 1997.*) 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 wilfully 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.]

82.12.045 Collection of tax on motor vehicles by county auditor or director of licensing—Remittance. (*Effective January 1, 1997.*) (1) 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:

(a) Where the applicant exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer;

(b) Where the application is for the renewal of registration;

(c) 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

(d) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050(3). 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.

(6) 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 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. [1996 c 149 § 19; 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.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

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

LOCAL RETAIL SALES AND USE TAXES

Sections

- 82.14.010 Legislative finding—Purpose.
- 82.14.020 Definitions—Where retail sale occurs.
- 82.14.030 Sales and use taxes authorized—Additional taxes authorized—Maximum rates.
- 82.14.032 Alteration of tax rate pursuant to government service agreement.
- 82.14.034 Alteration of county's share of city's tax receipts pursuant to government service agreement.
- 82.14.036 Imposition or alteration of additional taxes—Referendum petition to repeal—Procedure—Exclusive method.
- 82.14.040 County ordinance to contain credit provision.
- 82.14.045 Sales and use taxes for public transportation systems.
- 82.14.046 Sales and use tax equalization payments from local transit taxes.
- 82.14.048 Sales and use taxes for public facilities districts.

- 82.14.0485 Sales and use tax for baseball stadium—Counties with population of one million or more—Deduction from tax otherwise required—"Baseball stadium" defined.
- 82.14.0486 State contribution for baseball stadium limited.
- 82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals.
- 82.14.050 Administration and collection—Local sales and use tax account.
- 82.14.060 Distributions to counties, cities, transportation authorities, and public facilities districts—Imposition at excess rates, effect.
- 82.14.070 Consistency and uniformity with other taxes—Rules—Ordinances—Effective dates.
- 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.
- 82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted.
- 82.14.200 County sales and use tax equalization account—Allocation procedure.
- 82.14.210 Municipal sales and use tax equalization account—Allocation procedure.
- 82.14.212 Transfer of funds pursuant to government service agreement.
- 82.14.215 Apportionment and distribution—Withholding revenue for noncompliance.
- 82.14.220 Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210.
- 82.14.230 Natural or manufactured gas—Cities may impose use tax.
- 82.14.300 Local government criminal justice assistance—Finding.
- 82.14.310 County criminal justice assistance account—Distributions based on crime rate and population.
- 82.14.320 Municipal criminal justice assistance account—Distributions criteria and formula.
- 82.14.330 Municipal criminal justice assistance account—Distributions based on crime rate, population, and innovation.
- 82.14.335 Grant criteria for distributions under RCW 82.14.330(2).
- 82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures.
- 82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation.
- 82.14.360 Special stadium sales and use taxes.
- 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: PROVIDED, That except as provided in RCW 82.14.230, this sales and use tax shall not apply to natural or manufactured gas. 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. [1989 c 384 § 6; 1982 1st ex.s. c 49 § 17; 1970 ex.s. c 94 § 4.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional tax for high capacity transportation service: RCW 81.104.170.
Imposition of additional tax on sale of real property in lieu of tax under RCW 82.14.030(2): RCW 82.46.010(3).

82.14.032 Alteration of tax rate pursuant to government service agreement. The rate of sales and use tax imposed by a city under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 11.]

82.14.034 Alteration of county's share of city's tax receipts pursuant to government service agreement. The percentage of a city's sales and use tax receipts that a county receives under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 12.]

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 county with a population of one million or more 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. [1991 c 363 § 158. Prior: 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.]

Purpose—Captions now law—1991 c 363: See notes following RCW 2.32.180.

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.]

82.14.046 Sales and use tax equalization payments from local transit taxes. Beginning with distributions made to municipalities under RCW 82.44.150 on January 1, 1996, municipalities as defined in RCW 35.58.272 imposing local transit taxes, which for purposes of this section include the sales and use tax under RCW 82.14.045, the business and occupation tax under RCW 35.95.040, and excise taxes under RCW 35.95.040, shall be eligible for sales and use tax equalization payments from motor vehicle excise taxes distributed under RCW 82.44.150 as follows:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each municipality imposing local transit taxes and the state-wide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW for the previous calendar year calculated for a sales and use tax rate of one-tenth percent. For purposes of this section, the department of revenue shall determine a local transit tax rate for each municipality for the previous calendar year. The tax rate shall be equivalent to the sales and use tax rate for the municipality that would have generated an amount of revenue equal to the amount of local transit taxes collected by the municipality.

(2) For each tenth of one percent of the local transit tax rate, the state treasurer shall apportion to each municipality

receiving less than eighty percent of the state-wide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW as determined by the department of revenue under subsection (1) of this section, an amount when added to the per capita level of revenues received the previous calendar year by the municipality, to equal eighty percent of the state-wide weighted average per capita level of revenues determined under subsection (1) of this section. In no event may the sales and use tax equalization distribution to a municipality in a single calendar year exceed: (a) Fifty percent of the amount of local transit taxes collected during the prior calendar year; or (b) the maximum amount of revenue that could have been collected at a local transit tax rate of three-tenths percent in the prior calendar year.

(3) For a municipality established after January 1, 1995, sales and use tax equalization distributions shall be made according to the procedures in this subsection. Sales and use tax equalization distributions to eligible new municipalities shall be made at the same time as distributions are made under subsection (2) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new municipality has received a full year's worth of local transit tax revenues as of the January sales and use tax equalization distribution.

(a) Whether a newly established municipality determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October sales and use tax equalization distribution shall depend on the date the system first imposes local transit taxes.

(i) A newly established municipality imposing local transit taxes taking effect during the first calendar quarter shall be eligible to receive funds under this subsection beginning with the July sales and use tax equalization distribution of that year.

(ii) A newly established municipality imposing local transit taxes taking effect during the second calendar quarter shall be eligible to receive funds under this subsection beginning with the October sales and use tax equalization distribution of that year.

(iii) A newly established municipality imposing local transit taxes taking effect during the third calendar quarter shall be eligible to receive funds under this subsection beginning with the January sales and use tax equalization distribution of the next year.

(iv) A newly established municipality imposing local transit taxes taking effect during the fourth calendar quarter shall be eligible to receive funds under this subsection beginning with the April sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new municipality should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from local transit taxes that the new municipality would have received had the municipality received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (2) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the local transit taxes have been imposed.

(c) The department of revenue shall advise the state treasurer of the amounts calculated under (b) of this subsection and the state treasurer shall distribute these amounts to the new municipality from the motor vehicle excise tax distributed under RCW 82.44.150(2)(d).

(4) A municipality whose governing body implements a tax change that reduces its local transit tax rate after January 1, 1994, may not receive distributions under this section. [1995 c 298 § 1; 1994 c 241 § 2.]

Contingency—1995 c 298: Funding was provided for 1995 c 298 in 1995 2nd sp.s. c 14 § 413.

82.14.048 Sales and use taxes for public facilities districts. The governing board of a public facilities district under chapter 36.100 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall equal one-tenth 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.

Moneys received from any tax imposed under this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities. [1995 c 396 § 6; 1991 c 207 § 1.]

Severability—1995 c 396: See note following RCW 36.100.010.

82.14.0485 Sales and use tax for baseball stadium—Counties with population of one million or more—Deduction from tax otherwise required—"Baseball stadium" defined. (1) The legislative authority of a county with a population of one million or more may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.017 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.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium.

(4) No tax may be collected under this section before January 1, 1996, and no tax may be collected under this section unless the taxes under RCW 82.14.360 are being collected. The tax imposed in this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax is first collected.

(5) As used in this section, "baseball stadium" means a baseball stadium with natural turf and a retractable roof or canopy, together with associated parking facilities, constructed in the largest city in a county with a population of one million or more. [1995 3rd sp.s. c 1 § 101.]

Part headings not law—1995 3rd sp.s. c 1: "Part headings as used in this act constitute no part of the law." [1995 3rd sp.s. c 1 § 309.]

Effective date—1995 3rd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [October 17, 1995]." [1995 3rd sp.s. c 1 § 310.]

Baseball stadium construction agreement: RCW 36.100.037.

State contribution for baseball stadium limited: RCW 82.14.0486.

82.14.0486 State contribution for baseball stadium limited. Sections 101 through 105, chapter 1, Laws of 1995 3rd sp. sess. constitute the entire state contribution for a baseball stadium, as defined in RCW 82.14.0485. The state will not make any additional contributions based on revised cost or revenue estimates, cost overruns, unforeseen circumstances, or any other reason. [1995 3rd sp.s. c 1 § 106.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals. The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall be one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax shall not be used to subsidize any professional sports team and shall be used solely for the following purposes:

(1) Acquiring, constructing, maintaining, or operating public sports stadium facilities;

(2) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities; or

(3) Youth or amateur sport activities or facilities. [1992 c 194 § 3.]

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

82.14.050 Administration and collection—Local sales and use tax account. The counties, cities, and transportation authorities under RCW 82.14.045 and public facilities districts under chapter 36.100 RCW 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, cities, transportation authorities, and public facilities districts 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. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, and public facilities districts monthly. [1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

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

Applicability—1990 2nd ex.s. c 1 §§ 201-204: "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—1985 c 57: See note following RCW 18.04.105.

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, transportation authorities, and public facilities districts—Imposition at excess rates, effect. Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, cities, transportation authorities, and public facilities districts the amount of tax collected on behalf of each taxing authority, 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. [1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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. 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 82.44.110(1)(f). 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. [1991 sp.s. c 13 § 15; 1990 c 42 § 313; 1985 c 57 § 82; 1984 c 225 § 5; 1983 c 99 § 1; 1982 1st ex.s. c 49 § 21.]

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

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1985 c 57: See note following RCW 18.04.105.

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. 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 82.44.110(1)(e). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to January 1st of each year the department of revenue shall determine 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, 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 82.44.155, multiplied by forty-five fifty-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, 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 (6) 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, 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 (6) 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) For a city with an official incorporation date after January 1, 1990, municipal sales and use tax equalization distributions shall be made according to the procedures in this subsection. Municipal sales and use tax equalization distributions to eligible new cities shall be made at the same time as distributions are made under subsections (3) and (4) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new city has received a full year's worth of revenues under RCW 82.14.030(1) as of the January municipal sales and use tax equalization distribution.

(a) Whether a newly incorporated city determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October municipal sales and use tax equalization distribution shall depend on the date the city first imposes the tax authorized under RCW 82.14.030(1).

(i) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of January 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of that year.

(ii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of February 1st, March 1st, or April 1st shall be eligible to receive funds under this subsection beginning with the July municipal sales and use tax equalization distribution of that year.

(iii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of May 1st, June 1st, or July 1st shall be eligible to receive funds under this subsection beginning with the October municipal sales and use tax equalization distribution of that year.

(iv) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of August 1st, September 1st, or October 1st shall be eligible to receive funds under this subsection beginning with the January municipal sales and use tax equalization distribution of the next year.

(v) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of November 1st or December 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new city should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from the tax authorized under RCW 82.14.030(1) that the new city would have received had the city received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (3) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the tax authorized under RCW 82.14.030(1) is imposed.

(c) A new city imposing the tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution calculated under (b) of this subsection shall receive another distribution from the municipal sales and use tax equalization account. This distribution shall be equal to the calculation made under (b)(ii) of this subsection, prorated by

the number of months the city imposes the tax authorized under RCW 82.14.030(2) at the full rate.

(d) The department of revenue shall advise the state treasurer of the amounts calculated under (b) and (c) of this subsection and the state treasurer shall distribute these amounts to the new city from the municipal sales and use tax equalization account subject to the limitations imposed in subsection (6) of this section.

(e) Revenues estimated under this subsection shall not affect the calculation of the state-wide weighted average per capita level of revenues for all cities made under subsection (1) of this section.

(6) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions under subsection (3), (4), or (5) of this section, then the distributions under subsections (3), (4), and (5) 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), (4), and (5) of this section to the cities.

(7) 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 (5) 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. [1996 c 64 § 1; 1991 sp.s. c 13 § 16; 1990 2nd ex.s. c 1 § 701; 1990 c 42 § 314; 1985 c 57 § 83; 1984 c 225 § 2; 1982 1st ex.s. c 49 § 22.]

Effective date—1996 c 64: "This act shall take effect July 1, 1996." [1996 c 64 § 2.]

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

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1985 c 57: See note following RCW 18.04.105.

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.

82.14.212 Transfer of funds pursuant to government service agreement. Funds that are distributed to counties or cities pursuant to RCW 82.14.200 or 82.14.210 may be transferred by the recipient county or city to another unit of local government pursuant to a government service

agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 13.]

82.14.215 Apportionment and distribution—Withholding revenue for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the county or city is entitled under this chapter if a county or city is found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 35.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

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.

82.14.230 Natural or manufactured gas—Cities may impose use tax. (1) The governing body of any 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 on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer.

(2) The tax shall be imposed in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the tax on natural gas businesses under RCW 35.21.870 in the city in which the article is used. The "value of the article used," does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this subsection if those amounts are subject to tax under RCW 35.21.870.

(3) The tax imposed under this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 35.21.870 with respect to the gas for which exemption is sought under this subsection.

(4) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(5) The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be pursuant to RCW 82.14.050. [1989 c 384 § 2.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

82.14.300 Local government criminal justice assistance—Finding. The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation

of congested court systems, public safety education, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems. [1995 c 312 § 83; 1990 2nd ex.s. c 1 § 1.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Severability—1990 2nd ex.s. c 1: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 2nd ex.s. c 1 § 1104.]

82.14.310 County criminal justice assistance account—Distributions based on crime rate and population. (1) The county criminal justice assistance account is created in the state treasury.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed at such times as distributions are made under RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(iv) Distributions and eligibility for distributions in the 1989-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall

not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures. [1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

Effective dates—1993 sp.s. c 21: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993, except for section 4 of this act, which shall take effect immediately [May 28, 1993], and sections 1 through 3, 5, and 7 of this act, which shall take effect January 1, 1994." [1993 sp.s. c 21 § 10.]

Severability—1991 c 311: "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." [1991 c 311 § 8.]

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.320 Municipal criminal justice assistance account—Distributions criteria and formula. (1) The municipal criminal justice assistance account is created in the state treasury.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the state-wide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the state-wide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed at such times as distributions are made under RCW 82.44.150. The distributions shall be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five

percent of the state-wide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed shall be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, shall be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(6) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures. [1995 c 398 § 12; 1995 c 312 § 84; 1993 sp.s. c 21 § 2; 1992 c 55 § 1. Prior: 1991 sp.s. c 26 § 1; 1991 sp.s. c 13 § 30; 1990 2nd ex.s. c 1 § 104.]

Reviser's note: This section was amended by 1995 c 312 § 84 and by 1995 c 398 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Severability—1992 c 55: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 55 § 2.]

Retroactive application—1991 sp.s. c 26: "The changes contained in section 1, chapter 26, Laws of 1991 sp. sess. are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 sp.s. c 26 § 3.]

Severability—1991 sp.s. c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 26 § 4.]

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

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.330 Municipal criminal justice assistance account—Distributions based on crime rate, population, and innovation. (1) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed to the cities of the state as follows:

(a) Twenty percent appropriated for distribution shall be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the state-wide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate shall be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys shall be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(b) Sixteen percent shall be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection shall be distributed at such times as distributions are made under RCW 82.44.150.

Moneys distributed under this subsection shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2) In addition to the distributions under subsection (1) of this section:

(a) Fourteen percent shall be distributed to cities that have initiated innovative law enforcement strategies, includ-

ing alternative sentencing and crime prevention programs. No city may receive more than one dollar per capita under this subsection (2)(a).

(b) Twenty percent shall be distributed to cities that have initiated programs to help at-risk children or child abuse victim response programs. No city may receive more than fifty cents per capita under this subsection (2)(b).

(c) Twenty percent shall be distributed to cities that have initiated programs designed to reduce the level of domestic violence within their jurisdictions or to provide counseling for domestic violence victims. No city may receive more than fifty cents per capita under this subsection (2)(c).

(d) Ten percent shall be distributed to cities that contract with another governmental agency for a majority of the city's law enforcement services.

Moneys distributed under this subsection shall be distributed to those cities that submit funding requests under this subsection to the department of community, trade, and economic development based on criteria developed under RCW 82.14.335. Allocation of funds shall be in proportion to the population of qualified jurisdictions, but the distribution to a city shall not exceed the amount of funds requested. Cities shall submit requests for program funding to the department of community, trade, and economic development by November 1 of each year for funding the following year. The department shall certify to the state treasurer the cities eligible for funding under this subsection and the amount of each allocation.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed at the times as distributions are made under RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

If a city is found by the state auditor to have expended funds received under this subsection in a manner that does not comply with the criteria under which the moneys were received, the city shall be ineligible to receive future distributions under this subsection until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund. The director may allow noncomplying use of moneys received under this subsection upon a showing of hardship or other emergent need.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located. [1995 c 398 § 13; 1994 c 273 § 22; 1993 sp.s. c 21 § 3; 1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

Effective date—1994 c 273 § 22: "Section 22 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 273 § 24.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Retroactive application—1991 c 311: "The changes contained in sections 2, 3, 4, and 5 of this act are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 c 311 § 6.]

Severability—1991 c 311: See note following RCW 82.14.310.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.335 Grant criteria for distributions under RCW 82.14.330(2). The department of community, trade, and economic development shall adopt criteria to be used in making grants to cities under RCW 82.14.330(2). In developing the criteria, the department shall create a temporary advisory committee consisting of the director of community, trade, and economic development, two representatives nominated by the association of Washington cities, and two representatives nominated by the Washington association of sheriffs and police chiefs. [1995 c 399 § 213; 1993 sp.s. c 21 § 4.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures. The legislative authority of any county may fix and impose a sales and use tax in accordance with the terms of this chapter, provided that such sales and use tax is subject to repeal by referendum, using the procedures provided in RCW 82.14.036. The referendum procedure provided in RCW 82.14.036 is the exclusive method for subjecting any county sales and use tax ordinance or resolution to a referendum vote.

The tax authorized in this section shall be in addition to any other taxes authorized by law 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 county. The rate of tax shall equal one-tenth 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).

When distributing moneys collected under this section, the state treasurer shall distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section shall be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county shall receive that proportion that the unincorporated population of the county bears to the total population of the county and each city shall receive that proportion that the city incorporated population bears to the total county population.

Moneys received from any tax imposed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to

the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

In the expenditure of funds for criminal justice purposes as provided in this section, cities and counties, or any combination thereof, are expressly authorized to participate in agreements, pursuant to chapter 39.34 RCW, to jointly expend funds for criminal justice purposes of mutual benefit. Such criminal justice purposes of mutual benefit include, but are not limited to, the construction, improvement, and expansion of jails, court facilities, and juvenile justice facilities. [1995 c 309 § 1; 1993 sp.s. c 21 § 6. Prior: 1991 c 311 § 5; 1991 c 301 § 16; 1990 2nd ex.s. c 1 § 901.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Severability—1991 c 311: See note following RCW 82.14.310.

Retroactive application—1991 c 311: See note following RCW 82.14.330.

Finding—1991 c 301: See note following RCW 10.99.020.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Sales and use tax for high capacity transportation service limited by imposition of tax under RCW 82.14.340: RCW 81.104.170.

82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation. (1) A county legislative authority in a county with a population of less than one million may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth 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.

(3) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities and jails.

(4) Counties are authorized to develop joint ventures to collocate juvenile detention facilities and to collocate jails. [1995 2nd sp.s. c 10 § 1.]

82.14.360 Special stadium sales and use taxes. (1) The legislative authority of a county with a population of one million or more may impose a special stadium sales and

use tax upon the retail sale or use within the county by restaurants, taverns, and bars of food and beverages that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax 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. The tax imposed under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event. As used in this section, "restaurant" does not include grocery stores, mini-markets, or convenience stores.

(2) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed two percent of the selling price in the case of a sales tax, or rental value of the vehicle in the case of a use tax. The tax imposed under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event.

(3) The revenue from the taxes imposed under this section shall be used for the purpose of principal and interest payments on bonds, issued by the county, to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. Revenues from the taxes authorized in this section may be used for design and other preconstruction costs of the baseball stadium until bonds are issued for the baseball stadium. The county shall issue bonds, in an amount determined to be necessary by the public facilities district, for the district to acquire, construct, own, and equip the baseball stadium. The county shall have no obligation to issue bonds in an amount greater than that which would be supported by the tax revenues under this section, RCW 82.14.0485, and 36.38.010(3) (a) and (b). If the revenue from the taxes imposed under this section exceeds the amount needed for such principal and interest payments in any year, the excess shall be used solely:

(a) For early retirement of the bonds issued for the baseball stadium; and

(b) If the revenue from the taxes imposed under this section exceeds the amount needed for the purposes in (a) of this subsection in any year, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction.

(4) The taxes authorized under this section shall not be collected after June 30, 1997, unless the county executive has certified to the department of revenue that a professional major league baseball team has made a binding and legally enforceable contractual commitment to:

(a) Play at least ninety percent of its home games in the stadium for a period of time not shorter than the term of the bonds issued to finance the initial construction of the stadium;

(b) Contribute forty-five million dollars toward the reasonably necessary preconstruction costs including, but not limited to architectural, engineering, environmental, and legal services, and the cost of construction of the stadium, or to any associated public purpose separate from bond-financed property, including without limitation land acquisition, parking facilities, equipment, infrastructure, or other similar

costs associated with the project, which contribution shall be made during a term not to exceed the term of the bonds issued to finance the initial construction of the stadium. If all or part of the contribution is made after the date of issuance of the bonds, the team shall contribute an additional amount equal to the accruing interest on the deferred portion of the contribution, calculated at the interest rate on the bonds maturing in the year in which the deferred contribution is made. No part of the contribution may be made without the consent of the county until a public facilities district is created under chapter 36.100 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. To the extent possible, contributions shall be structured in a manner that would allow for the issuance of bonds to construct the stadium that are exempt from federal income taxes; and

(c) Share a portion of the profits generated by the baseball team from the operation of the professional franchise for a period of time equal to the term of the bonds issued to finance the initial construction of the stadium, after offsetting any losses incurred by the baseball team after *the effective date of chapter 14, Laws of 1995 1st sp. sess. Such profits and the portion to be shared shall be defined by agreement between the public facilities district and the baseball team. The shared profits shall be used to retire the bonds issued to finance the initial construction of the stadium. If the bonds are retired before the expiration of their term, the shared profits shall be paid to the public facilities district.

(5) No tax may be collected under this section before January 1, 1996. Before collecting the taxes under this section or issuing bonds for a baseball stadium, the county shall create a public facilities district under chapter 36.100 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium.

(6) The county shall assemble such real property as the district determines to be necessary as a site for the baseball stadium. Property which is necessary for this purpose that is owned by the county on October 17, 1995, shall be contributed to the district, and property which is necessary for this purpose that is acquired by the county on or after October 17, 1995, shall be conveyed to the district.

(7) The proceeds of any bonds issued for the baseball stadium shall be provided to the district.

(8) As used in this section, "baseball stadium" means "baseball stadium" as defined in RCW 82.14.0485.

(9) The taxes imposed under this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the taxes are first collected. [1995 3rd sp.s. c 1 § 201; 1995 1st sp.s. c 14 § 7.]

***Reviser's note:** 1995 1st sp.s. c 14 had two effective dates. Sections 1 through 9 and 11 took effect July 1, 1995, and sections 10 and 12 took effect June 14, 1995.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

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 34.05 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.]

Chapter 82.14B

COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

Sections

- 82.14B.010 Findings.
 82.14B.020 Definitions.
 82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount.
 82.14B.040 Collection of tax.
 82.14B.050 Use of proceeds.
 82.14B.060 Administration and collection.
 82.14B.070 Emergency service communication districts—Authorized—Consolidation—Dissolution.
 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.
 82.14B.900 Severability—1981 c 160.

82.14B.010 Findings. The legislature finds that the state and counties should be provided with an additional revenue source to fund enhanced 911 emergency communication systems throughout the state on a multicounty, county-wide, or district-wide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to impose an excise tax on the use of switched access lines. [1991 c 54 § 9; 1981 c 160 § 1.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.020 Definitions. As used in this chapter:

(1) "Emergency services communication system" means a multicounty, county-wide, or district-wide radio or landline communications network, including an enhanced 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) "Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(5) "Radio access line" means the telephone number assigned to or used by an end user for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal

communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signalling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(6) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010.

(7) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010. [1994 c 96 § 2; 1991 c 54 § 10; 1981 c 160 § 2.]

Finding—Intent—1994 c 96: "(1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the *study of such funding as detailed in the report." [1994 c 96 § 1.]

***Reviser's note:** See 1992 c 218 and 1994 c 96 § 6.

Effective dates—1994 c 96: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994], except section 5 of this act shall take effect January 1, 1995." [1994 c 96 § 8.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount. (1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county 911 excise tax on the use of radio access lines located within the county in an amount not exceeding twenty-five cents per month for each radio access line. The amount of tax shall be uniform for each radio access line. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the users who paid the tax. The ordinance shall further provide that to the extent

the users who paid the tax cannot be identified or located, the tax paid by those users shall be returned to the county.

(3) Beginning January 1, 1992, a state enhanced 911 excise tax is imposed on all switched access lines in the state. For 1992, the tax shall be set at a rate of twenty cents per month for each switched access line. Until December 31, 1998, the amount of tax shall not exceed twenty cents per month for each switched access line and thereafter shall not exceed ten cents per month for each switched access line. The tax shall be uniform for each switched access line. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(4) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year. [1994 c 96 § 3; 1991 c 54 § 11; 1981 c 160 § 3.]

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.040 Collection of tax. The state enhanced 911 tax and the county enhanced 911 tax on switched access lines shall be collected from the user by the local exchange company providing the switched access line. The county 911 tax on radio access lines shall be collected from the end user by the radio communications service company providing the radio access line to the end user. The amount of the tax shall be stated separately on the billing statement which is sent to the user. [1994 c 96 § 4; 1991 c 54 § 12; 1981 c 160 § 4.]

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

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—Consolidation—Dissolution. 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.

A county legislative authority proposing to consolidate existing emergency service communication districts 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 districts. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the consolidation of the emergency service communication districts. Following the hearing, the county legislative authority may consolidate the emergency service communication districts, if the county legislative authority finds the action to be in the public interest and adopts a resolution providing for the action. The county legislative authority shall specify the manner in which consolidation is to be accomplished.

A county legislative authority proposing 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. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the dissolution of the emergency service communication district. Following the hearing, the county legislative authority may 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. The county legislative authority shall specify the manner in which dissolution is to be accomplished and shall supervise the liquidation of any assets and the satisfaction of any outstanding indebtedness. [1994 c 54 § 1; 1987 c 17 § 1.]

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 to finance the system by imposing the excise tax authorized in RCW 82.14B.030. [1991 c 54 § 13; 1987 c 17 § 3.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.100 Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060. RCW 82.14B.040 through 82.14B.060 apply to any emergency service communication district established

under RCW 82.14B.070 and 82.14B.090. [1991 c 54 § 14; 1987 c 17 § 4.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

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.
82.16.045	Exemptions and credits—Pollution control facilities.
82.16.047	Exemptions—Ride sharing.
82.16.048	Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature.
82.16.049	Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling.
82.16.050	Deductions in computing tax.
82.16.053	Deductions in computing tax—Light and power businesses.
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.
82.16.090	Light or power and gas distribution businesses—Information required on customer billings.

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 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 and/or for the wheeling of electricity for others.

(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 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, 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.

(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. [1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 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—1996 c 150: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

Effective dates—1991 c 272: See RCW 81.108.901.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

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) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other

than ones mentioned above: One and eight-tenths of one percent;

(g) 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. [1996 c 150 § 2; 1989 c 302 § 204; 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.]

Effective date—1996 c 150: See note following RCW 82.16.010.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

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 of RCW 82.16.020(1), shall be taxable under each schedule applicable to the businesses engaged in. [1989 c 302 § 205; 1982 1st ex.s. c 35 § 6; 1961 c 15 § 82.16.030. Prior: 1935 c 180 § 38; RRS § 8370-38.]

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

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 two thousand 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 two thousand dollars, or more, no exemption or deductions from the gross operating revenue is allowed by this provision. [1996 c 111 § 4; 1961 c 15 § 82.16.040. Prior: 1959 ex.s. c 3 § 17; 1959 c 197 § 27; 1935 c 180 § 39; RRS § 8370-39.]

Findings—Purpose—Effective date—1996 c 111: See notes following RCW 82.32.030.

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.]

*Reviser's note: RCW 46.74.010 was amended by 1996 c 244 § 2 changing the term "ride sharing for the elderly and the handicapped" to "ride sharing for persons with special transportation needs."

Severability—1979 c 111: See note following RCW 46.74.010.

82.16.048 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature. (Expires December 31, 2000.) (1) Employers in this state who are taxable under this chapter and provide financial incentives to their employees for ride sharing, for using public transportation, or for using nonmotorized commuting before June 30, 2000, shall be allowed a credit for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, or for using nonmotorized commuting, not to exceed sixty dollars per employee per year. The credit shall be equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. For ride sharing in vehicles carrying two persons, the credit shall be equal to the amount paid to or on behalf of each employee multiplied by thirty percent, but may not exceed sixty dollars per employee per year. The credit may not exceed the amount of tax that would otherwise be due under this chapter.

(2) Application for tax credit under this chapter may only be made in the form and manner prescribed in rules adopted by the department.

(3) The credit shall be taken not more than once quarterly and not less than once annually against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees for ride sharing, for using public transportation, or for using nonmotorized commuting and must be claimed by the due date of the last tax return for the calendar year in which the payment is made.

(4) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(5) On the first of April, July, October, and January of each year, the state treasurer based upon information provided by the department shall deposit a sum equal to the dollar amount of the credit provided under subsection (1) of this section from the air pollution control account to the general fund.

(6) The commute trip reduction task force shall determine the effectiveness of this tax credit as part of its ongoing evaluation of the commute trip reduction law and report no later than December 1, 1997, to the legislative transportation committee and to the fiscal committees of the house of representatives and the senate. The report shall include information on the amount of tax credits claimed to date and recommendations on future funding for the tax credit program.

(7) Any person who knowingly makes a false statement of a material fact in the application for a credit under subsection (1) of this section is guilty of a gross misdemeanor.

(8) A person may not receive credit for amounts paid to or on behalf of the same employee under both this section and RCW 82.04.4453. [1996 c 128 § 3; 1994 c 270 § 4.]

Effective date—Expiration date—1996 c 128: See note following RCW 82.04.4453.

Finding—Expiration date—1994 c 270: See notes following RCW 82.04.4453.

Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Definitions: RCW 82.04.4455.

82.16.049 Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling. (Expires December 31, 2000.) (1) The department shall keep a running total of all credits granted under RCW 82.04.4453 and 82.16.048 during each calendar year, and shall disallow any credits that would cause the tabulation for any calendar year to exceed one million five hundred thousand dollars.

(2) No employer shall be eligible for tax credits under RCW 82.04.4453 and 82.16.048 in excess of one hundred thousand dollars in any calendar year.

(3) No employer shall be eligible for tax credits under RCW 82.16.048 in excess of the amount of tax that would otherwise be due under this chapter.

(4) No portion of an application for credit disallowed under this section may be carried back or carried forward. [1996 c 128 § 4; 1994 c 270 § 5.]

Effective date—Expiration date—1996 c 128: See note following RCW 82.04.4453.

Finding—Expiration date—1994 c 270: See notes following RCW 82.04.4453.

Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Definitions: RCW 82.04.4455.

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, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity 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 production, sale, or transfer of electrical energy for resale or consumption outside the state;

(10) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(11) 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. [1994 c 124 § 12; 1989 c 302 § 103; 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.]

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Effective date—1982 2nd ex.s. c 9: See note following RCW 82.16.010.

82.16.053 Deductions in computing tax—Light and power businesses. (1) In computing tax under this chapter, a light and power business may deduct from gross income the lesser of the amounts determined under subsections (2) through (4) of this section.

(2)(a) Fifty percent of wholesale power cost paid during the reporting period, if the light and power business has fewer than five and one-half customers per mile of line.

(b) Forty percent of wholesale power cost paid during the reporting period, if the light and power business has more than five and one-half but less than eleven customers per mile.

(c) Thirty percent of the wholesale power cost paid during the reporting period, if the light and power business has more than eleven but less than seventeen customers per mile of line.

(d) Zero if the light and power business has more than seventeen customers per mile of line.

(3) Wholesale power cost multiplied by the percentage by which the average retail electric power rates for the light and power business exceed the state average electric power rate. If more than fifty percent of the kilowatt hours sold by a light and power business are sold to irrigators, then only sales to nonirrigators shall be used to calculate the average electric power rate for that light and power business. For purposes of this subsection, the department shall determine state average electric power rate each year based on the most recent available data and shall inform taxpayers of its determination.

(4) Four hundred thousand dollars per month. [1996 c 145 § 1; 1994 c 236 § 1.]

Effective date—1996 c 145: "This act shall take effect July 1, 1996." [1996 c 145 § 2.]

Effective date—1994 c 236: "This act shall take effect July 1, 1994." [1994 c 236 § 2.]

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.]

82.16.090 Light or power and gas distribution businesses—Information required on customer billings. Any customer billing issued by a light or power business or gas distribution business that serves a total of more than twenty thousand customers and operates within the state shall include the following information:

(1) The rates and amounts of taxes paid directly by the customer upon products or services rendered by the light and power business or gas distribution business; and

(2) The rate, origin and approximate amount of each tax levied upon the revenue of the light and power business or gas distribution business and added as a component of the amount charged to the customer. Taxes based upon revenue of the light and power business or gas distribution business to be listed on the customer billing need not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW. [1988 c 228 § 1.]

Effective date—1988 c 228: "This act shall take effect on January 1, 1989." [1988 c 228 § 2.]

Chapter 82.18

REFUSE COLLECTION TAX

Sections

82.18.010	Definitions.
82.18.020	Solid waste collection tax—Revenue to public works assistance account per RCW 82.18.040.
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.
82.18.901	Severability—1989 c 431.

82.18.010 Definitions. For purposes of this chapter:

(1) "Solid waste collection business" means every person who receives solid 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) "Solid 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 solid waste collection tax is imposed. [1989 c 431 § 78; 1986 c 282 § 6.]

82.18.020 Solid waste collection tax—Revenue to public works assistance account per RCW 82.18.040. There is imposed on each person using the solid waste services of a solid waste collection business a solid waste collection tax equal to three and six-tenths percent of the consideration charged for the services. [1989 c 431 § 79; 1986 c 282 § 7.]

Section captions not law—1989 c 431: See RCW 70.95.902.

82.18.030 Collection of tax. The person collecting the charges made for using the solid waste collection business shall collect the tax imposed in this chapter. 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. [1989 c 431 § 84; 1986 c 282 § 8.]

82.18.040 Collection of tax—Payment to state. Taxes collected under this chapter shall be held in trust until paid to the state. Except for taxes received under *RCW 82.18.100, 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 solid waste collection tax and this tax shall have priority over all other claims to the amount remitted. [1989 c 431 § 85; 1986 c 282 § 9.]

***Reviser's note:** RCW 82.18.100 expired July 1, 1995.

82.18.050 Federal government exempt from tax. The solid waste collection taxes imposed in this chapter shall not apply to any agency, division, or branch of the federal

government or to services rendered under a contract therewith. [1989 c 431 § 86; 1986 c 282 § 10.]

82.18.060 No multiple taxation of single transaction. To prevent pyramiding and multiple taxation of a single transaction, the solid waste collection taxes imposed in this chapter shall not apply to any solid waste collection business using the services of another solid waste collection business for the transfer, storage, processing, 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 solid waste collection business. [1989 c 431 § 87; 1986 c 282 § 11.]

82.18.070 Applicability of general administrative provisions. Chapter 82.32 RCW applies to the taxes imposed under this chapter. [1989 c 431 § 88; 1986 c 282 § 12.]

82.18.080 Enforcement. The department of revenue shall have the power to enforce the taxes imposed in this chapter through appropriate rules. [1989 c 431 § 89; 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.]

82.18.901 Severability—1989 c 431. See RCW 70.95.901.

Chapter 82.19 LITTER TAX

Sections

82.19.010	Litter tax imposed.
82.19.020	Application to certain products.
82.19.030	Rule-making authority tax—Items subject to—Reporting and accounting.
82.19.040	Application of chapters 82.04 and 82.32 RCW—Disposition of revenue.
82.19.050	Exemptions.
82.19.900	Effective date—1992 c 175.

82.19.010 Litter tax imposed. In addition to any other taxes, there is hereby levied and there shall be collected by the department of revenue from every person for the privilege of engaging within this state in business as a manufacturer, as a wholesaler, or as a retailer, an annual litter tax equal to the value of products listed in RCW 82.19.020, including byproducts, manufactured within this state, multiplied by fifteen one-thousandths of one percent in the case of manufacturers, and equal to the gross proceeds of sales of the products listed in RCW 82.19.020 that are sold within this state multiplied by fifteen one-thousandths of one percent in the case of wholesalers and retailers. [1992 c 175 § 3; 1971 ex.s. c 307 § 12. Formerly RCW 70.93.120.]

82.19.020 Application to certain products. To accomplish effective litter control within the state and to allocate a portion of the cost of administering this chapter to those industries whose products, including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, the tax imposed in this chapter shall only apply to the value of products or the gross proceeds of sales of products falling into the following categories:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products. [1992 c 175 § 4; 1971 ex.s. c 307 § 13. Formerly RCW 70.93.130.]

82.19.030 Rule-making authority tax—Items subject to—Reporting and accounting. (1) The department of revenue, by rule, may, if such is required, define those items subject to tax under RCW 82.19.020. In making any such definitions, the department of revenue shall be guided by the following standards:

(a) It is the purpose of this chapter to accomplish effective control of litter within this state;

(b) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state.

(2) Instead of requiring each business to separately account for taxable and nontaxable products under this chapter, the department may provide, by rule, that the tax imposed in this chapter be reported and paid based on a percentage of total sales for a particular type of business if the department determines that the percentage reasonably approximates the taxable activity of the particular type of business. [1992 c 175 § 5; 1971 ex.s. c 307 § 14. Formerly RCW 70.93.140.]

82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (1) To the extent applicable, all of the provisions of chapters 82.04 and 82.32 RCW apply to the tax imposed in this chapter, except RCW 82.04.220 through 82.04.290, and 82.04.330.

(2) Taxes collected under this chapter shall be deposited in the waste reduction, recycling, and litter control account under RCW 70.93.180. [1992 c 175 § 6; 1971 ex.s. c 307 § 16. Formerly RCW 70.93.160.]

82.19.050 Exemptions. The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state; or

(2) The value of products or gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. [1992 c 175 § 7; 1971 ex.s. c 307 § 17. Formerly RCW 70.93.170.]

82.19.900 Effective date—1992 c 175. This act shall take effect July 1, 1992. [1992 c 175 § 11.]

Chapter 82.21

HAZARDOUS SUBSTANCE TAX—MODEL TOXICS CONTROL ACT

Sections

82.21.010	Intent of pollution tax.
82.21.020	Definitions.
82.21.030	Pollution tax.
82.21.040	Exemptions.
82.21.050	Credits.
82.21.900	Short title—1989 c 2.
82.21.905	Captions—1989 c 2.
82.21.910	Construction—1989 c 2.
82.21.915	Existing agreements—1989 c 2.
82.21.920	Effective date—1989 c 2.
82.21.921	Severability—1989 c 2.

82.21.010 Intent of pollution tax. 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. However, it is not intended to impose a tax on the first possession of small amounts of any hazardous substance (other than petroleum and pesticide products) that is first possessed by a retailer for the purpose of sale to ultimate consumers. This chapter is not intended to exempt any person from tax liability under any other law. [1989 c 2 § 8 (Initiative Measure No. 97, approved November 8, 1988).]

82.21.020 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 March 1, 1989, 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 shall 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.

(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 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. [1989 c 2 § 9 (Initiative Measure No. 97, approved November 8, 1988).]

82.21.030 Pollution tax. (1) A tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax shall be seven-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 70.105D.070.

(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. [1989 c 2 § 10 (Initiative Measure No. 97, approved November 8, 1988).]

82.21.040 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 shall constitute 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 hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

(5) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(6) Any persons possessing a hazardous substance where such possession first occurred before March 1, 1989. [1989 c 2 § 11 (Initiative Measure No. 97, approved November 8, 1988).]

82.21.050 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) Which is imposed on the act or privilege of possessing hazardous substances, and which is not generally imposed on other activities or privileges; and

(ii) Which 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. [1989 c 2 § 12 (Initiative Measure No. 97, approved November 8, 1988).]

82.21.900 Short title—1989 c 2. See RCW 70.105D.900.

82.21.905 Captions—1989 c 2. See RCW 70.105D.905.

82.21.910 Construction—1989 c 2. See RCW 70.105D.910.

82.21.915 Existing agreements—1989 c 2. See RCW 70.105D.915.

82.21.920 Effective date—1989 c 2. See RCW 70.105D.920.

82.21.921 Severability—1989 c 2. See RCW 70.105D.921.

Chapter 82.23A

PETROLEUM PRODUCTS—UNDERGROUND STORAGE TANK PROGRAM FUNDING

(Formerly: Tax on petroleum products)

Sections

82.23A.005 Intent.

82.23A.010 Definitions.

82.23A.020 Tax imposed—Revenue to be used for underground petroleum storage tank programs.

82.23A.030 Exemptions from tax.

82.23A.040 Credit authorized.

82.23A.900 Effective date—1989 c 383.

82.23A.901 Severability—1989 c 383.

82.23A.902 Expiration date—1996 c 88.

82.23A.005 Intent. (*Expires June 1, 2001.*) It is the intent of this chapter to impose a tax only once for each petroleum product possessed in this state and to tax the first possession of all petroleum products. This chapter is not intended to exempt any person from tax liability under any other law. [1989 c 383 § 14.]

82.23A.010 Definitions. (*Expires June 1, 2001.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "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.

(2) "Possession" means the control of a petroleum product 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 petroleum product or to authorize the sale or use by another.

(3) "Previously taxed petroleum product" means a petroleum product in respect to which a tax has been paid under this chapter and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(4) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar products of like quality and character, in accordance with rules of the department.

(5) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [1989 c 383 § 15.]

82.23A.020 Tax imposed—Revenue to be used for underground petroleum storage tank programs. (*Expires June 1, 2001.*) (1) A tax is imposed on the privilege of possession of petroleum products in this state. The rate of

the tax shall be fifty one-hundredths of one percent multiplied by the wholesale value of the petroleum product.

(2) Moneys collected under this chapter shall be deposited in the pollution liability insurance program trust account under RCW 70.148.020.

(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.

(4) Within thirty days after the end of each calendar quarter the department shall determine the "quarterly balance," which shall be the cash balance in the pollution liability insurance program trust account as of the last day of that calendar quarter, after excluding the reserves determined for that quarter under RCW 70.148.020 (2) and (3). Balance determinations by the department under this section are final and shall not be used to challenge the validity of any tax imposed under this section. For each subsequent calendar quarter, tax shall be imposed under this section during the entire calendar quarter unless:

(a) Tax was imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars; or

(b) Tax was not imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than seven million five hundred thousand dollars. [1991 c 4 § 8; 1990 c 64 § 12; 1989 c 383 § 16.]

Severability—1991 c 4: See note following RCW 70.148.120.

82.23A.030 Exemptions from tax. (Expires June 1, 2001.) The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed petroleum product. If tax due under this chapter has not been paid with respect to a petroleum product, the department may collect the tax from any person who has had possession of the petroleum product. If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a petroleum product 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) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(4) Any persons possessing a petroleum product where such possession first occurred before July 1, 1989.

(5) Any possession of (a) natural gas, (b) petroleum coke, or (c) liquid fuel or fuel gas used in petroleum processing.

(6) Any possession of petroleum products that are exported for use or sale outside this state as fuel.

(7) Any possession of petroleum products packaged for sale to ultimate consumers. [1989 c 383 § 17.]

82.23A.040 Credit authorized. (Expires June 1, 2001.) (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 petroleum product tax paid to another state with respect to the same petroleum product. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that petroleum product. For the purpose of this subsection:

(a) "Petroleum product tax" means a tax:

(i) That is imposed on the act or privilege of possessing petroleum products, and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the value of the petroleum product, 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) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1989 c 383 § 18.]

82.23A.900 Effective date—1989 c 383. (Expires June 1, 2001.) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except RCW 82.23A.005 through 82.23A.040 shall take effect July 1, 1989. [1989 c 383 § 22.]

82.23A.901 Severability—1989 c 383. See RCW 70.148.901.

82.23A.902 Expiration date—1996 c 88. This chapter shall expire on June 1, 2001, coinciding with the expiration of chapter 70.148 RCW. [1996 c 88 § 3.]

Chapter 82.23B

OIL SPILL RESPONSE TAX

Sections

82.23B.010 Definitions.

82.23B.020 Oil spill response tax—Oil spill administration tax—Study of tax credits.

82.23B.030 Exemption.

82.23B.040 Credit—Crude oil or petroleum exported or sold for export.

82.23B.045 Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item.

82.23B.050 Rules.

82.23B.060 Imposition of taxes.

82.23B.900 Effective dates—Severability—1991 c 200.

82.23B.901 Savings—1992 c 73.

82.23B.902 Effective dates—1992 c 73.

82.23B.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(3) "Department" means the department of revenue.

(4) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(5) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(6) "Person" has the meaning provided in RCW 82.04.030.

(7) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(8) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal in this state from a waterborne vessel or barge and who is liable for the taxes imposed by this chapter.

(9) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine. [1992 c 73 § 6; 1991 c 200 § 801.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.020 Oil spill response tax—Oil spill administration tax—Study of tax credits. (1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of two cents per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of three cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the depart-

ment 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 taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes 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. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill administration account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the

tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than twenty-five million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars.

(11) The *office of marine safety, the department of revenue, and the department of community, trade, and economic development shall study tax credits for taxpayers employing vessels with the best achievable technology and the best available protection to reduce the risk of oil spills to the navigable waters of the state and submit the study to the appropriate standing committees of the legislature by December 1, 1992. [1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

*Reviser's note: The office of marine safety was transferred to the department of ecology and renamed the integrated oil spill prevention and response program by 1995 2nd sp.s. c 14 § 515, effective January 1, 1996, until June 30, 1997.

Severability—1992 c 73: See RCW 90.56.905.

82.23B.030 Exemption. The taxes imposed under this chapter shall only apply to the first receipt of crude oil or petroleum products at a marine terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine terminal in this state or after refining or other processing. [1992 c 73 § 9; 1991 c 200 § 803.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.040 Credit—Crude oil or petroleum exported or sold for export. Credit shall be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine terminal and subsequently exported from or sold for export from the state. [1992 c 73 § 10; 1991 c 200 § 804.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.045 Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item. (1) Any person having paid the tax imposed by this chapter who uses petroleum products as a consumer for a purpose other than as a fuel may claim refund or credit against the tax imposed under this chapter. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190.

(2) Any person having paid the tax imposed by this chapter who uses petroleum products as a component or ingredient in the manufacture of an item which is not a fuel may claim a refund or credit against the tax imposed by this chapter.

(3) The amount of refund or credit claimed under this section may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used. The refund or credit allowed by this section shall be claimed on such forms and subject to such requirements as the department may prescribe by rule. [1992 c 73 § 8.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.050 Rules. The department shall adopt such rules as may be necessary to enforce and administer the provisions of this chapter. Chapter 82.32 RCW applies to the administration, collection, and enforcement of the taxes levied under this chapter. [1991 c 200 § 808.]

82.23B.060 Imposition of taxes. The taxes imposed in this chapter shall take effect October 1, 1991. [1991 c 200 § 809.]

82.23B.900 Effective dates—Severability—1991 c 200. See RCW 90.56.901 and 90.56.904.

82.23B.901 Savings—1992 c 73. The amendment of RCW 82.23B.010, 82.23B.020, 82.23B.030, and 82.23B.040 by chapter 73, Laws of 1992, shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections or under any rule or order adopted under the sections, nor as affecting any proceeding instituted under the sections. [1992 c 73 § 44.]

82.23B.902 Effective dates—1992 c 73. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1992], except sections 6, 7, 9, and 10 of this act shall take effect October 1, 1992. [1992 c 73 § 46.]

Chapter 82.24

TAX ON CIGARETTES

Sections	
82.24.010	Definitions.
82.24.020	Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.
82.24.027	Additional tax imposed—Rate—Deposit in water quality account.
82.24.030	Stamps.
82.24.040	Duty of wholesaler.
82.24.050	Retailer—Possession of unstamped cigarettes.
82.24.060	Stamps—How affixed.
82.24.070	Compensation of dealers.
82.24.080	Legislative intent—Taxable event—Tax liability.
82.24.090	Records—Preservation—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.
82.24.235	Rules.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.260	Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability.
82.24.270	Cigarettes given away—Stamp not required—Payment of tax—Interest—Payment of amount less than due—Penalties—Administration.

- 82.24.280 Liability from tax increase—Interest and penalties on unpaid tax or penalty—Administration.
- 82.24.290 Exceptions—Federal instrumentalities and purchasers from federal instrumentalities.
- 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—Vending machines.
- 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.

Minors: Chapter 70.155 RCW.

82.24.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "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.

(2) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

(3) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.

(4) "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.

(5) "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.

(6) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(7) "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.

(8) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [1995 c 278 § 1; 1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370-83.]

Effective date—1995 c 278: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 278 § 17.]

82.24.020 Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.

(1) There is levied and there shall be collected as provided in this chapter, 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) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to the rate of five and one-fourth mills per cigarette. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to the rate of ten mills per cigarette through June 30, 1994, eleven and one-fourth mills per cigarette for the period July 1, 1994, through June 30, 1995, twenty mills per cigarette for the period July 1, 1995, through June 30, 1996, and twenty and one-half mills per cigarette thereafter. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(4) 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.

(5) 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 or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held. [1994 sp.s. c 7 § 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 307; 1989 c 271 § 504; 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.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

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. (1) 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. The stamps must 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 or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, every person shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she 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. [1995 c 278 § 2; 1990 c 216 § 1; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.040 Duty of wholesaler. (1) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a 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 the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

(2) Every wholesaler licensed under Washington state law 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, 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 department, at Olympia, not later than the fifteenth day of the following calendar month. 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.

(3) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department. [1995 c 278 § 3; 1990 c 216 § 2; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.050 Retailer—Possession of unstamped cigarettes. No retailer in this state may possess unstamped cigarettes within this state except as provided in this chapter. [1995 c 278 § 4; 1990 c 216 § 3; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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—Taxable event—Tax liability. (1) It is the intent and purpose of this chapter to levy a tax on all of the articles taxed under this chapter, 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 taxed under this chapter 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.

(2) 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 and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by subsection (1) of this section but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. A precollection obligation may not be imposed upon a person exempt from the tax who sells, distributes, or transfers possession of cigarettes to another person who, by law, is exempt from the tax imposed by this chapter or upon whom the obligation for collection of the tax may not be imposed. 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.

(3) In the event of an increase in the rate of the tax imposed under this chapter, it is the intent of the legislature that the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed articles after the effective date of the rate increase shall be liable for the additional tax, or its precollection obligation as required by this chapter, represented by the rate increase. The failure to pay the additional tax with respect to the first taxable event after the effective date of a rate increase shall not prevent tax liability for the additional tax from arising from a subsequent taxable event. [1995 c 278 § 5; 1993 c 492 § 308; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.090 Records—Preservation—Reports. (1) 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. These records must show all transactions relating to the purchase and sale of any of the articles taxed under this chapter and show all physical inventories performed on those articles, all invoices, and a record of all stamps purchased. 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.

(2) 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. The 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. [1995 c 278 § 6; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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 licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) 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;

(e) To violate any of the provisions of this chapter;

(f) To violate any lawful rule made and published by the department of revenue;

(g) To use any stamps more than once;

(h) To refuse to allow the department of revenue or its duly authorized agent, 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;

(i) Except as provided in this chapter, for any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(j) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, 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;

(k) For any wholesaler or retailer or his or her 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 her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(l) 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;

(m) For any person to possess or transport in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is 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 in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) 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 and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. 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 this chapter. [1995 c 278 § 7; 1990 c 216 § 4; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.120 Violations—Penalties and interest. (*Effective until January 1, 1997.*) (1) If any person, subject to the provisions of this chapter or any rules adopted 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 adopted by the department of revenue in the admin-

istration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest thereon at the rate as computed under RCW 82.32.050(2) from the date the tax became due, and upon notice mailed to the last known address of the person. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) 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 as computed under RCW 82.32.050(2) from the date the tax became due.

(3) 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.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.270 and 82.24.280. [1995 c 278 § 8; 1990 c 267 § 1; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Effective date—1990 c 267: "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.120 Violations—Penalties and interest. (*Effective January 1, 1997.*) (1) If any person, subject to the provisions of this chapter or any rules adopted 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 adopted 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 remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) 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.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.270 and 82.24.280. [1996 c 149 § 7;

1995 c 278 § 8; 1990 c 267 § 1; 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.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

Effective date—1990 c 267: "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

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 under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband. [1990 c 216 § 5; 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 34.05 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 amended by 1987 c 202 § 243 without reference to its repeal by 1987 c 496 § 6. It has been decoded 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. (*Effective until January 1, 1997.*) 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 returned under this section, 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 the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, 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. [1990 c 267 § 2; 1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

Effective date—1990 c 267: See note following RCW 82.24.120.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.180 Seized property may be returned—Penalty, interest. (*Effective January 1, 1997.*) (1) 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.

(2) When any property is returned under this section, 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 the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, and interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due

until the date of payment, and in such cases, no advertisement shall be made or notices posted in connection with said seizure. [1996 c 149 § 8; 1990 c 267 § 2; 1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1990 c 267: See note following RCW 82.24.120.

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: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in RCW 82.24.270 and 82.24.280. [1995 c 278 § 9; 1961 c 15 § 82.24.230. Prior: 1935 c 180 § 95; RRS § 8370-95.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.235 Rules. The department may adopt such rules as are necessary to enforce and administer this chapter. [1995 c 278 § 15.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the department in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) 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.

(4) In the absence of the notice of transportation required by this section or 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 a person 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.

(5) 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.

(6) 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.

(7) For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" means:

(a) A wholesaler or retailer, licensed under Washington state law;

(b) The United States or an agency thereof; and

(c) Any person, including an Indian tribal organization, who, after notice has been given to the department as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department. [1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.260 Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability. (1) Other than:

(a) A person required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe,

a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) 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. [1995 c 278 § 11; 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.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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.

82.24.270 Cigarettes given away—Stamp not required—Payment of tax—Interest—Payment of amount less than due—Penalties—Administration. (*Effective until January 1, 1997.*) (1) All cigarettes taxed under this chapter that are given away for advertising or other purposes are not required to have the state tax stamp affixed. Instead, the manufacturer of the cigarettes shall pay the tax on a monthly tax return to be supplied by the department.

(2) The tax is due on or before the twenty-fifth day of the month following the month in which the taxable activi-

ties, that is the providing of cigarette samples, occur. If not paid by the due date, interest applies to any unpaid tax or penalty. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) 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 the additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All the cigarettes must evidence the payment of the tax by having printed on their packages wording to the following effect: "Complimentary, not for sale, all applicable state taxes paid by manufacturer."

(5) All of chapter 82.32 RCW applies to taxes due under this section except: RCW 82.32.050(1) and 82.32.270. [1995 c 278 § 12.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.270 Cigarettes given away—Stamp not required—Payment of tax—Interest—Payment of amount less than due—Penalties—Administration. (*Effective January 1, 1997.*) (1) All cigarettes taxed under this chapter that are given away for advertising or other purposes are not required to have the state tax stamp affixed. Instead, the manufacturer of the cigarettes shall pay the tax on a monthly tax return to be supplied by the department.

(2) The tax is due on or before the twenty-fifth day of the month following the month in which the taxable activities, that is the providing of cigarette samples, occur. If not paid by the due date, interest applies to any unpaid tax. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) 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 the additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All the cigarettes must evidence the payment of the tax by having printed on their packages wording to the following effect: "Complimentary, not for sale, all applicable state taxes paid by manufacturer."

(5) All of chapter 82.32 RCW applies to taxes due under this section except: RCW 82.32.050(1) and 82.32.270. [1996 c 149 § 9; 1995 c 278 § 12.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.280 Liability from tax increase—Interest and penalties on unpaid tax or penalty—Administration.

(*Effective until January 1, 1997.*) (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax or penalty. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) 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. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [1995 c 278 § 13.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.280 Liability from tax increase—Interest and penalties on unpaid tax—Administration. (*Effective January 1, 1997.*) (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) 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. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [1996 c 149 § 10; 1995 c 278 § 13.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.290 Exceptions—Federal instrumentalities and purchasers from federal instrumentalities. The taxes imposed by this chapter do not apply to the sale of cigarettes to:

(1) United States army, navy, air force, marine corps, or coast guard exchanges and commissaries and navy or coast guard ships' stores;

(2) The United States veterans' administration; or

(3) Any authorized purchaser from the federal instrumentalities named in subsection (1) or (2) of this section. [1995 c 278 § 14.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.500 Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty. 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. (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. 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 depart-

ment 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—Vending machines. A fee of ninety-three dollars shall accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates. A fee of thirty additional dollars for each vending machine shall accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. [1993 c 507 § 15; 1986 c 321 § 7.]

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

82.24.540 Licensee to operate within scope of license—Penalty. 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. (1) The department of revenue shall enforce the provisions of this chapter except RCW 82.24.500, which will be enforced by the liquor control board. 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 willful 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. [1993 c 507 § 17; 1986 c 321 § 9.]

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

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. Except as specified in RCW 70.155.120, 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. [1993 c 507 § 18; 1986 c 321 § 10.]

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

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 taxes for general fund, health services account.
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.

Minors: Chapter 70.155 RCW.

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;

(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. [1995 c 278 § 16; 1975 1st ex.s. c 278 § 70; 1961 c 15 § 82.26.010. Prior: 1959 ex.s. c 5 § 11.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.020 Tax imposed—Additional taxes for general fund, health services account. (1) 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.

(2) Taxes under this section 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.

(3) An additional tax is imposed equal to seven percent multiplied by the tax payable under subsection (1) of this section.

(4) An additional tax is imposed equal to ten percent of the wholesale sales price of tobacco products. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900. [1993 c 492 § 309; 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.]

Finding—Intent—1993 c 492: See notes following RCW 43.20.050.

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

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, except all species of tuna, mackerel, and jack; shellfish; and anadromous game fish, including byproducts 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. [1995 c 372 § 4; 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 and twenty-five one-hundredths percent.

(b) Pink and sockeye salmon: Three and fifteen one-hundredths percent.

(c) Other food fish and shellfish, except oysters: Two and one-tenth percent.

(d) Oysters: Eight 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. [1993 sp.s. c 17 § 12; 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.]

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

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 or shellfish which are raised from eggs, fry, or larvae 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. [1995 2nd sp.s. c 7 § 1; 1985 c 413 § 3; 1980 c 98 § 3.]

Effective date—1995 2nd sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 7 § 2.]

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 within twenty-five days after the end of the month in which the taxable activity occurs. 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. In such cases tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return. [1990 c 214 § 1; 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 wildlife fund. [1988 c 36 § 61; 1983 c 284 § 7; 1980 c 98 § 7.]

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.
- 82.29A.020 Definitions.
- 82.29A.030 Tax imposed—Credit—Additional tax imposed.
- 82.29A.040 Counties and cities authorized to impose tax—Maximum rate—Credit—Collection.
- 82.29A.050 Payment—Due dates—Collection and remittance—Liability—Reporting.
- 82.29A.060 Administration—Appraisal appeal—Audits.
- 82.29A.070 Disposition of revenue.
- 82.29A.080 Counties and cities to contract with state for administration and collection—Local leasehold excise tax account.
- 82.29A.090 Distributions to counties and cities.
- 82.29A.100 Distributions by county treasurers.
- 82.29A.110 Consistency and uniformity of local leasehold tax with state leasehold tax—Model ordinance.
- 82.29A.120 Allowable credits.
- 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.

For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent shall include only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and shall not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(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. [1991 c 272 § 23; 1986 c 285 § 1; 1979 ex.s. c 196 § 11; 1975-'76 2nd ex.s. c 61 § 2.]

Effective dates—1991 c 272: See RCW 81.108.901.

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 last 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. [1992 c 206 § 6; 1975-'76 2nd ex.s. c 61 § 5.]

Effective date—1992 c 206: See note following RCW 82.04.170.

82.29A.060 Administration—Appraisal appeal—Audits. (1) All administrative provisions in chapters 82.02 and 82.32 RCW shall be applicable to taxes imposed pursuant to this chapter.

(2) A lessee, or a sublessee in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the county board of equalization for a change in appraised value when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(b) based on an appraisal done by the county assessor at the request of the department. The petition must be on forms prescribed or

approved by the department of revenue and any petition not conforming to those requirements or not properly completed shall not be considered by the board. The petition must be filed with the board within the time period set forth in RCW 84.40.038. A decision of the board of equalization may be appealed by the taxpayer to the board of tax appeals as provided in RCW 84.08.130.

A sublessee, in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the department for a change in taxable rent when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(b).

Any change in tax resulting from an appeal under this subsection shall be allocated to the lessee or sublessee responsible for paying the tax.

(3) This section shall not authorize the issuance of any levy upon any property owned by the public lessor.

(4) 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. [1994 c 95 § 1; 1975-'76 2nd ex.s. c 61 § 6.]

Effective date—1994 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 95 § 3.]

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 18.04.105.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

82.29A.090 Distributions to counties and cities.

Bimonthly 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 without regard to any property tax exemption under RCW 84.36.381, if it were privately owned by the lessee or if it were privately owned by any sublessee if the value of the credit inures to the sublessee. For lessees and sublessees who would qualify for a property tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit shall be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381.

(2) With respect to a product lease, a credit of thirty-three percent of the tax otherwise due. [1994 c 95 § 2; 1986 c 285 § 2; 1975-'76 2nd ex.s. c 61 § 12.]

Effective date—1994 c 95: See note following RCW 82.29A.060.

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.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee. [1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective date—1995 c 138: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 138 § 2.]

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 34.05 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 34.05 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****Sections**

- 82.32.010 Application of chapter stated.
- 82.32.020 Definitions.
- 82.32.030 Registration certificates—Threshold levels.
- 82.32.045 Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements.
- 82.32.050 Deficient tax or penalty payments—Interest—Limitations.
- 82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund.
- 82.32.065 Tax refund to consumer under new motor vehicle warranty laws—Credit or refund to new motor vehicle manufacturer.
- 82.32.070 Records to be preserved—Examination—Estoppel to question assessment.
- 82.32.080 Payment by check—Electronic funds transfer—Mailing returns or remittances—Time extension—Deposits—Records—Payment must accompany return.
- 82.32.085 Electronic funds transfer—Generally.
- 82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties.
- 82.32.100 Failure to file returns or provide records—Assessment of tax by department—Penalties and interest.
- 82.32.105 Waiver or cancellation of interest or penalties.
- 82.32.110 Examination of books or records—Subpoenas—Contempt of court.
- 82.32.120 Oaths and acknowledgments.
- 82.32.130 Notice and orders—Service.
- 82.32.140 Taxpayer quitting business—Liability of successor.
- 82.32.145 Termination, dissolution, or abandonment of corporate or limited liability business—Personal liability of person in control of collected sales tax funds.
- 82.32.150 Contest of tax—Prepayment required—Restraining orders and injunctions barred.
- 82.32.160 Correction of tax—Administrative procedure—Conference—Determination by department.
- 82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department.
- 82.32.180 Court appeal—Procedure.
- 82.32.190 Stay of collection pending suit.
- 82.32.200 Stay of collection—Bond.
- 82.32.210 Tax warrant—Filing—Lien—Effect.
- 82.32.215 Revocation of certificate of registration.
- 82.32.220 Execution of warrant—Levy upon property—Satisfaction.
- 82.32.230 Agent of the department of revenue may execute.
- 82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default.

- 82.32.237 Notice and order to withhold and deliver—Continuing lien—Effective date.
- 82.32.240 Tax constitutes debt to the state—Priority of lien.
- 82.32.245 Search for and seizure of property—Warrant—Procedure.
- 82.32.260 Payment condition to dissolution or withdrawal of corporation.
- 82.32.265 Use of collection agencies to collect taxes outside the state.
- 82.32.270 Accounting period prescribed.
- 82.32.280 Tax declared additional.
- 82.32.290 Unlawful acts—Penalties.
- 82.32.291 Resale certificate, unlawful use—Penalty—Rules.
- 82.32.300 Department of revenue to administer.
- 82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith.
- 82.32.320 Revenue to state treasurer—Allocation for return or payment for less than the full amount due.
- 82.32.330 Disclosure of return or tax information.
- 82.32.340 Chargeoff of uncollectible taxes—Destruction of files and records.
- 82.32.350 Closing agreements authorized.
- 82.32.360 Conclusive effect of agreements.
- 82.32.380 Revenues to be deposited in general fund.
- 82.32.390 Certain revenues to be deposited in water quality account.
- 82.32.410 Written determinations as precedents.

Debts owed state: RCW 43.17.240.

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—Threshold levels. (1) Except as provided in subsection (2) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she shall, under such rules as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate. 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. 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. No person required to be registered under this section shall engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect; and

(d) The person is not otherwise required to obtain a license subject to the master application procedure provided in chapter 19.02 RCW. [1996 c 111 § 2. Prior: 1994 sp.s. c 7 § 446; 1994 sp.s. c 2 § 2; 1992 c 206 § 8; 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.]

Findings—Purpose—1996 c 111: "The legislature finds that small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses." [1996 c 111 § 1.]

Effective date—1996 c 111: "This act shall take effect July 1, 1996." [1996 c 111 § 5.]

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

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

Effective date—1994 sp.s. c 2: See note following RCW 82.04.4451.

Effective date—1992 c 206: See note following RCW 82.04.170.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.045 Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements. (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.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twenty-four thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect. [1996 c 111 § 3; 1983 2nd ex.s. c 3 § 63; 1982 1st ex.s. c 35 § 27; 1981 c 172 § 7; 1981 c 7 § 1.]

Findings—Purpose—Effective date—1996 c 111: See notes following RCW 82.32.030.

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 tax or penalty payments—Interest—Limitations. (Effective until January 1, 1997.)

(1) 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 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 the date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2). [1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 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 date—Applicability—1992 c 169: "(1) This act shall take effect July 1, 1992.

(2) This act is effective for all written waivers that remain enforceable as of July 1, 1992." [1992 c 169 § 4.]

Effective date—1991 c 142 §§ 9-11: "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

Severability—1991 c 142: See RCW 82.32A.900.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.050 Deficient tax or penalty payments—Interest—Limitations. (Effective January 1, 1997.) (1) 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 shall add thereto interest on the tax only at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(4) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date. [1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 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.]

Findings—Intent—1996 c 149: "The legislature finds that a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

Effective date—1996 c 149: "This act shall take effect January 1, 1997." [1996 c 149 § 20.]

Effective date—Applicability—1992 c 169: "(1) This act shall take effect July 1, 1992.

(2) This act is effective for all written waivers that remain enforceable as of July 1, 1992." [1992 c 169 § 4.]

Effective date—1991 c 142 §§ 9-11: "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

Severability—1991 c 142: See RCW 82.32A.900.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund. (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's 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, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsections (2) and (3) of this section, no refund or credit shall be made for taxes, penalties, or interest 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.

(2) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(3) Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or subcontracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which the 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.

(4) 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. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(5) 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 the same manner, as provided in subsection (4) of this section, 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, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2), less one percentage point. [1992 c 169 § 2; 1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 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 date—Applicability—1992 c 169: See note following RCW 82.32.050.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

Effective date—1990 c 69: "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

Severability—1990 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." [1990 c 69 § 4.]

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—Electronic funds transfer—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.

Payment of the tax is to be made by electronic funds transfer if the amount of the tax due in a calendar year is two hundred forty thousand dollars or more, provided that until January 1, 1992, electronic funds transfer shall be required only if the tax due is one million eight hundred thousand dollars or more. After January 1, 1992, the department may by rule provide for tax thresholds between two hundred forty thousand dollars and one million eight hundred thousand dollars for mandatory use of electronic funds transfer. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this section to require electronic funds transfer for those taxes reported on the department's combined excise tax return or any successor return.

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, except as otherwise provided in this chapter.

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. The above authority to refuse to accept a return shall not apply when a return is timely filed and a timely payment has been made by electronic funds transfer. [1990 c 69 § 2; 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.]

Severability—Effective date—1990 c 69: See notes following RCW 82.32.060.

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.

82.32.085 Electronic funds transfer—Generally. "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, drafts, 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.

The electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.

The department shall adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules shall include but are not limited to: (1) Coordinating

the filing of tax returns with payment by electronic funds transfer; (2) form and content of electronic funds transfer; (3) voluntary use of electronic funds transfer with permission of the department; (4) use of commonly accepted means of electronic funds transfer; (5) means of crediting and recording proof of payment; and (6) means of correcting errors in transmission. Any changes in the threshold of tax shall be implemented with a separate rule-making procedure. [1990 c 69 § 3.]

Severability—Effective date—1990 c 69: See notes following RCW 82.32.060.

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties. (*Effective until January 1, 1997.*) (1) If payment of any tax due on a return to be filed by a taxpayer 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 five dollars.

(2) If payment of any tax assessed by the department of revenue 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. No penalty so added shall be less than five dollars.

(3) 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 ten dollars.

(4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(5) 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.

(6) The aggregate of penalties imposed under this section for failure to pay a tax due on a return by the due date, late payment of any tax, increase, or penalty, or issuance of a warrant shall not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater.

(7) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due. [1992 c 206 § 3; 1991 c 142 § 11; 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.]

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

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.]

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties. (*Effective January 1, 1997.*) (1) If payment of any tax due on a return to be filed by a taxpayer 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 on or before the last day of the month following 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 on or before the last day of the second month following 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 five dollars.

(2) If payment of any tax assessed by the department of revenue 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. No penalty so added shall be less than five dollars.

(3) 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 ten dollars.

(4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions

because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(5) 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.

(6) The aggregate of penalties imposed under subsections (1), (2), and (3) of this section shall not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(7) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(8) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue, and that has a statutorily defined due date. [1996 c 149 § 15; 1992 c 206 § 3; 1991 c 142 § 11; 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.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

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 or provide records—Assessment of tax by department—Penalties and interest. (1) 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 records of any such person as provided in RCW 82.32.110.

(2) 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 any applicable penalties or interest due, but such action shall not deprive such person from appealing the assessment as provided in this chapter. 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 thirty days from the date of such notice.

(3) 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 (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2). [1992 c 169 § 3; 1989 c 378 § 21; 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 date—Applicability—1992 c 169: See note following RCW 82.32.050.

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. (*Effective until January 1, 1997.*) 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.

82.32.105 Waiver or cancellation of penalties or interest—Rules. (*Effective January 1, 1997.*) (1) 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 penalties imposed under this chapter with respect to such tax.

(2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department shall waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department of revenue shall adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter. [1996 c 149 § 17; 1975 1st ex.s. c 278 § 78; 1965 ex.s. c 141 § 8.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

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 of court. 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, the person is subject to proceedings for contempt, and the department shall thereupon institute contempt of court proceedings in the superior court of Thurston county or of the county in which such person resides. [1989 c 373 § 27; 1975 1st ex.s. c 278 § 79; 1961 c 15 § 82.32.110. Prior: 1935 c 180 § 194; RRS § 8370-194.]

Severability—1989 c 373: See RCW 7.21.900.

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.

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 or limited liability business—Personal liability of person in control of collected sales tax funds.

(1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, 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, member or manager, 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 or limited liability company 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. [1995 c 318 § 2; 1987 c 245 § 1.]

Effective date—1995 c 318: See note following RCW 82.04.030.

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, may within thirty 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 thirty-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. [1989 c 378 § 22; 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 or, if an application for refund has been made to the department within that time limitation, then within thirty days after rejection of the application, whichever time limitation is later. In the appeal the taxpayer shall set forth the amount of the tax imposed upon the taxpayer which the taxpayer 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.

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 the taxpayer 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 may seek appellate review in the same manner as other civil actions are appealed to the appellate 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. [1992 c 206 § 4; 1989 c 378 § 23; 1988 c 202 § 67; 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.]

Effective date—1992 c 206: See note following RCW 82.04.170.

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

Appeal to board of tax appeals, formal hearing: RCW 82.03.160.

82.32.190 Stay of collection pending suit. (Effective until January 1, 1997.) 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.

82.32.190 Stay of collection pending suit—Interest. (*Effective January 1, 1997.*) (1) 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. 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 until the date of payment.

(2) Interest imposed under this section for periods after January 1, 1997, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for taxes held in abeyance under this section before January 1, 1997, but outstanding after January 1, 1997, shall not be recalculated but shall remain at three-quarters of one percent per each thirty days or portion thereof. [1996 c 149 § 3; 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.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.200 Stay of collection—Bond. (*Effective until January 1, 1997.*) 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.

82.32.200 Stay of collection—Bond—Interest. (*Effective January 1, 1997.*) (1) 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 date the bond is filed until the date of payment.

(2) Interest imposed under this section after January 1, 1997, shall be computed on a daily basis on the amount of tax at the rate as computed under RCW 82.32.050(2). The

rate so computed shall be adjusted on the first day of January of each year. Interest for bonds filed before January 1, 1997, but outstanding after January 1, 1997, shall not be recalculated but shall remain at one percent per each thirty days or portion thereof. [1996 c 149 § 4; 1975 1st ex.s. c 278 § 83; 1961 c 15 § 82.32.200. Prior: 1935 c 180 § 201; RRS § 8370-201.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

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 to the state—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 who is, or decedent who was, engaging in business, 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 sixty 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

to the extent of the value of the property subject to administration that otherwise would have been available for the payment of such taxes, increases, and penalties by the administrator, executor, guardian, receiver, or assignee.

As used in this section, "probate" includes the nonprobate claim settlement procedure under chapter 11.42 RCW, and "executor" and "administrator" includes any notice agent acting under chapter 11.42 RCW. [1994 c 221 § 69; 1988 c 64 § 21; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

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.

82.32.291 Resale certificate, unlawful use—Penalty—Rules. Any person who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase shall be assessed a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service. The department may waive the penalty imposed under this section if it finds that the use of the certificate was due to circumstances beyond the taxpayer's control or if the certificate was properly used for purchases for dual purposes. The department shall define by rule what circumstances are considered to be beyond the taxpayer's control. [1993 sp.s. c 25 § 703.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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—Allocation for return or payment for less than the full amount due. 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 or her receipt therefor. If a return or payment is submitted with less than the full amount of all taxes, interest, and penalties due, the department may allocate payments among applicable funds so as to minimize administrative costs to the extent practicable. [1995 c 318 § 7; 1975 1st ex.s. c 278 § 92; 1961 c 15 § 82.32.320. Prior: 1935 c 180 § 209; RRS § 8370-209.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.330 Disclosure of return or tax information. (*Effective until January 1, 1997.*) (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with

the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, 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, Canada or its provincial governments, 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;

(i) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States customs service, the coast guard of the United States, and the United States department of transportation, or any authorized representative thereof, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose; or

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (f), (g), (h), or (i) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, shall upon conviction be punished by a fine not exceeding one thousand dollars and, if the person guilty of such violation is an officer or employee of the state, such person 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. [1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 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.]

Effective date—1995 c 197: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

82.32.330 Disclosure of return or tax information. (*Effective January 1, 1997.*) (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: **PROVIDED,** That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: **PROVIDED,** That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, 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, Canada or its provincial governments, 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;

(j) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States Customs Service, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose; or

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession

of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), or (j) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person 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. [1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 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.]

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date—1995 c 197: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

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 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 is satisfied that there are no cost-effective means of collecting the tax or penalty.

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, the department may charge off any tax within its jurisdiction to collect that is owed by a taxpayer, including any penalty or interest thereon, 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, and collectible from, the taxpayer. [1989 c 78 § 3; 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.]

[Title 82 RCW—page 132]

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.

82.32.410 Written determinations as precedents. (1) The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax, interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter 42.17 RCW or any other statute applicable to the department of revenue. [1991 c 330 § 2.]

Chapter 82.32A

TAXPAYER RIGHTS AND RESPONSIBILITIES

Sections

- 82.32A.002 Short title.
- 82.32A.005 Finding.
- 82.32A.010 Administration of chapter.
- 82.32A.020 Rights.
- 82.32A.030 Responsibilities.
- 82.32A.040 Taxpayer rights advocate.
- 82.32A.050 Taxpayer services program.
- 82.32A.900 Severability—1991 c 142.

82.32A.002 Short title. This chapter shall be known and cited as "Washington taxpayers' rights and responsibilities." [1991 c 142 § 1.]

82.32A.005 Finding. (1) The legislature finds that taxes are one of the most sensitive points of contact between citizens and their government, and that there is a delicate balance between revenue collection and taxpayers' rights and responsibilities. The rights, privacy, and property of Washington taxpayers should be protected adequately during the process of the assessment and collection of taxes.

(2) The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have a responsibility to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply with the provisions of the revenue act, Title 82 RCW, and where taxpayers cooperate in the administration of these provisions. [1991 c 142 § 2.]

82.32A.010 Administration of chapter. The department of revenue shall administer this chapter. The department of revenue shall adopt or amend rules as may be necessary to fully implement this chapter and the rights established under this chapter. [1991 c 142 § 3.]

82.32A.020 Rights. The taxpayers of the state of Washington have:

(1) The right to a written explanation of the basis for any tax deficiency assessment, interest, and penalties at the time the assessments are issued;

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

(3) The right to redress and relief where tax laws or rules are found to be unconstitutional by the final decision of a court of record and the right to prompt administrative remedies in such cases;

(4) The right to confidentiality and protection from public inquiry regarding financial and business information in the possession of the department of revenue in accordance with the requirements of RCW 82.32.330;

(5) The right to receive, upon request, clear and current tax instructions, rules, procedures, forms, and other tax information; and

(6) The right to a prompt and independent administrative review by the department of revenue of a decision to revoke a tax registration, and to a written determination that either sustains the revocation or reinstates the registration. [1991 c 142 § 4.]

82.32A.030 Responsibilities. To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including, but not limited to, the responsibility to:

- (1) Register with the department of revenue;
- (2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;
- (3) Keep accurate and complete business records;
- (4) File accurate returns and pay taxes in a timely manner;
- (5) Ensure the accuracy of the information entered on their tax returns;
- (6) Substantiate claims for refund;
- (7) Timely pay all taxes after closing a business and request cancellation of registration number; and
- (8) Timely respond to communications from the department of revenue. [1991 c 142 § 5.]

82.32A.040 Taxpayer rights advocate. The director of revenue shall appoint a taxpayer rights advocate. The advocate shall be responsible for directly assisting taxpayers and their representatives to assure their understanding and utilization of the policies, processes, and procedures available to them in the resolution of problems. [1991 c 142 § 6.]

82.32A.050 Taxpayer services program. The department of revenue shall maintain a taxpayer services program consisting of, but not limited to:

- (1) Providing taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence;
- (2) Conducting tax workshops at locations most conveniently accessible to the majority of taxpayers affected; and
- (3) Publishing written bulletins, instructions, current revenue laws, rules, court decisions, and interpretive rulings of the department of revenue. [1991 c 142 § 7.]

82.32A.900 Severability—1991 c 142. 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. [1991 c 142 § 12.]

Chapter 82.33

ECONOMIC AND REVENUE FORECASTS

Sections

- 82.33.010 Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts.
- 82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue.
- 82.33.030 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee.
- 82.33.040 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings.

82.33.010 Economic and revenue forecast council—Oversight and approval of economic and revenue 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 council shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts. As used in this chapter, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(3) 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 82.33.020. If the council is unable to approve a forecast before a date required in RCW 82.33.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(4) 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.

(5) 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. [1990 c 229 § 1; 1984 c 138 § 4. Formerly RCW 82.01.130.]

Effective date—1990 c 229: See note following RCW 41.06.087.

82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue. (1) Four times each year the supervisor shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

- (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.

(2) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, 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.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information shall be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff shall co-locate and share information, data, and files with the tax research section of the department of revenue but shall not duplicate the duties and functions of one another.

(5) As part of its forecasts under subsection (1) of this section, the supervisor shall provide estimated revenue from tuition fees as defined in RCW 28B.15.020. [1992 c 231 § 34; 1990 c 229 § 2. Prior: 1987 c 505 § 79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1. Formerly RCW 82.01.120.]

Effective date—1992 c 231: See note following RCW 28B.10.016.

Effective date—1990 c 229: See note following RCW 41.06.087.

82.33.030 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. Formerly RCW 82.01.125.]

Legislative evaluation and accountability program committee: Chapter 44.48 RCW.

82.33.040 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. Formerly RCW 82.01.135.]

Chapter 82.33A

ECONOMIC CLIMATE COUNCIL

Sections

82.33A.005 Intent.

82.33A.010 Council—Created—Selection of benchmarks—Report to governor, legislature—Access to agency information.

82.33A.020 Advisory committee—Membership—Duties—Meetings—Travel expenses.

82.33A.005 Intent. The citizens of Washington should enjoy a high quality of life, which requires a healthy state economy. To achieve this goal, the legislature recognizes that the state must be able to compete economically at a national and international level. It is critical to the economic well-being of the citizens of this state that the legislature strive to continually improve the state's economic climate. Therefore, the legislature intends to provide a mechanism whereby the information necessary to achieve this goal is available on a timely and reliable basis. [1996 c 152 § 1.]

82.33A.010 Council—Created—Selection of benchmarks—Report to governor, legislature—Access to agency information. (1) The economic climate council is hereby created.

(2) The council shall select a series of no more than ten benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost

of doing business; the education and skills of the work force; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

- (a) The availability of comparative information for other states and countries;
- (b) The timeliness with which benchmark information can be obtained; and
- (c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

The council shall report to the legislature by September 30, 1996, on the benchmarks selected under this subsection (2).

(3) Twice each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

(4) The council shall submit reports prepared under this section to the governor and the fiscal committees of the senate and the house of representatives on or before March 31st and September 30th of each year. The first report shall be made by September 30, 1996.

(5) All agencies of state government shall provide to the council immediate access to all information relating to economic climate reports. [1996 c 152 § 2.]

Economic and revenue forecast council acting temporarily as economic climate council—1996 c 152: "(1) Until July 1, 1997, the economic and revenue forecast council shall, in addition to its other duties and responsibilities, function as the economic climate council created under RCW 82.33A.010.

(2) The staff of the economic and revenue forecast council shall serve as staff to the economic climate council until July 1, 1997.

(3) By September 30, 1996, the council shall make recommendations to the legislature regarding: (a) Permanent composition of the economic climate council, including the procedures for appointment of members, length of terms, selection of a chair, and reimbursement for expenses or other compensation; and (b) a permanent staffing structure to support the work of the economic climate council." [1996 c 152 § 3.]

82.33A.020 Advisory committee—Membership—Duties—Meetings—Travel expenses. (1) The economic climate council shall create an advisory committee to assist the council in selecting benchmarks and developing economic climate reports and benchmarks. The advisory committee shall provide for a process to ensure public participation in the selection of the benchmarks. The advisory committee shall consist of no more than seven members. At least two of the members of the advisory committee shall have experience in and represent business, and at least two of the members shall have experience in and represent labor. All of the members of the advisory committee shall have special expertise and interest in the state's economic climate and competitive strategies. Appointments to the advisory committee shall be recommended by the chair of the council and approved by a two-thirds vote of the council. The chair of the advisory committee shall be selected by the members of the committee.

(2) The advisory committee shall meet as determined by the chair of the committee until September 30, 1996, and

shall meet at least twice per year thereafter in advance of the economic climate reports due on March 31st and September 30th of each year.

(3) Members of the advisory council shall serve without compensation but shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 while attending meetings of the advisory committee, sessions of the economic climate council, or on official business authorized by the council. [1996 c 152 § 4.]

Chapter 82.34

POLLUTION CONTROL FACILITIES—TAX EXEMPTIONS AND CREDITS

Sections

82.34.010	Definitions.
82.34.015	Limitations on the issuance of certificates under RCW 82.34.010(5) (b) and (c).
82.34.020	Application for certificate—Filing—Form—Contents.
82.34.030	Approval of application by control agency—Notice to department—Hearing—Appeal to state air pollution control board.
82.34.040	Rules.
82.34.050	Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption.
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.
82.34.070	Credits accumulated prior to July 30, 1967, pursuant to RCW 82.04.435.
82.34.080	Modification or replacement of facility.
82.34.090	Certified mail—Use of in sending certificates or notice of refusal to issue certificates.
82.34.100	Revision of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement.
82.34.110	Administrative and judicial review.
82.34.900	Severability—1967 ex.s. c 139.
82.34.901	Severability—1981 2nd ex.s. c 9.

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, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste which if released to a water course could cause water pollution: PROVIDED, That the word "facility" shall not be construed to include any control device, 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 department of ecology; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located, or the department of ecology, 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 department of ecology has assumed jurisdiction.

(7) "Department" shall mean the department of revenue. [1988 c 127 § 36; 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. The department may adopt such rules as it deems necessary for the administration of this chapter subject to the provisions of RCW 34.05.310 through 34.05.395. Such rules shall not abridge the authority of the appropriate control agency as provided in this chapter or any other law. [1989 c 175 § 177; 1967 ex.s. c 139 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 department of ecology, 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. [1988 c 127 § 37; 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 34.05, 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

Sections

82.35.010	Intent.
82.35.020	Definitions.
82.35.040	Issuance of certificate—Limitations—Tabulation of costs incurred—Administrative rules.
82.35.050	Credit against taxes—Conditions—Amount—Limitations.
82.35.070	Issuance of certificate or supplement and notice of refusal to issue certificate or supplement—Certified mail.
82.35.080	Revocation of certificate—Grounds—Continuance of certificate—Liability for money saved—Technical assistance.
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. [1996 c 186 § 521; 1979 ex.s. c 191 § 2.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

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 34.05 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 department of community, trade, and economic development shall provide technical assistance to the department in carrying out its responsibilities under this section. [1996 c 186 § 522; 1979 ex.s. c 191 § 8.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

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	
82.36.010	Definitions.
82.36.020	Tax imposed—Rate to be computed—Allocation of proceeds.
82.36.025	State-wide motor vehicle fuel taxes.
82.36.030	Monthly gallonage return.
82.36.032	Penalty for filing fraudulent monthly gallonage return.
82.36.038	Payment of tax—Due dates—Electronic funds transfer.
82.36.040	Payment of tax—Penalty for delinquency.
82.36.045	Distributors—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation or conversion—Penalties, liability.
82.36.047	Assessments—Warrant; Lien.
82.36.050	Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations.
82.36.060	Application for distributor's license—Investigation—Fee—Penalty for false statement—Bond or security.
82.36.070	Issuance of license—Display—Refusal of issuance—Inspection of records.
82.36.080	Penalty for distributing without license—Default assessment.
82.36.090	Discontinuance or transfer of business—Notice.
82.36.100	Tax required of persons not classed as distributors—Duties—Procedure—Distribution of proceeds—Penalties.
82.36.110	Delinquency—Lien of tax—Notice.
82.36.120	Delinquency—Notice to debtors—Lien.
82.36.130	Delinquency—Tax warrant.
82.36.140	State may pursue remedy against distributor or bond.
82.36.150	Records to be kept by distributors and producers.
82.36.160	Records to be preserved by distributors and dealers.
82.36.170	Additional reports.
82.36.180	Examinations and investigations.
82.36.190	Revocation of licenses.
82.36.200	Carriers of motor vehicle fuel—Examination of records, stocks, etc.
82.36.210	Carriers of motor vehicle fuel on highways—Invoice, bill of sale, etc., required—Inspections—Impounding—Penalty—Enforcement.
82.36.220	Exemptions—Tourists.
82.36.230	Exemptions—Imports, exports, federal sales.
82.36.240	Sales to state or political subdivisions not exempt.
82.36.245	Exemption—Sales to foreign diplomatic and consular missions.
82.36.250	Nongovernmental use of fuels, etc., acquired from United States government—Tax—Unlawful to procure or use.
82.36.260	Extension of time for filing exportation certificates or claiming exemptions.
82.36.270	Refund permit.
82.36.275	Refunds for urban transportation systems.
82.36.280	Refunds for nonhighway use of fuel.
82.36.285	Refunds for transit services to persons with special transportation needs by nonprofit transportation providers.
82.36.290	Refunds for use in manufacturing, cleaning, dyeing.
82.36.300	Refunds on exported fuel.
82.36.305	Refunds to dealer delivering fuel exclusively for marine use—Limitations—Supporting certificate.
82.36.306	Remedies for violation of RCW 82.36.305—Rules—Coloring of fuel exclusively for marine use, samples may be taken.
82.36.310	Claim of refund.
82.36.320	Information may be required.
82.36.330	Payment of refunds—Penalty.
82.36.335	Distributor may obtain credit on tax in lieu of collection and refund.
82.36.340	Examination of books and records.
82.36.350	Fraudulent invoices—Penalty.
82.36.360	Separate invoices for nontaxed fuel.
82.36.370	Refunds for fuel lost or destroyed through fire, flood, leakage, etc.
82.36.375	Time limitation on erroneous payment credits or refunds and notices of additional tax.
82.36.380	Violations—Penalties.

- 82.36.390 Diversion of export fuel—Penalty.
- 82.36.400 Other offenses—Penalties.
- 82.36.410 Revenue to motor vehicle fund.
- 82.36.415 Refund to aeronautics account.
- 82.36.420 Disposition of fees, fines, penalties.
- 82.36.430 Enforcement.
- 82.36.435 Enforcement and administration—Rule-making authority.
- 82.36.440 State preempts tax field.
- 82.36.450 Agreement with tribe for imposition, collection, use.

Constitutional limitations on certain taxes, highway funds: State Constitution Art. 2 § 40.

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; also every person who acquires motor vehicle fuel, on which the tax has not been paid, and exports it by commercial motor vehicle to a location outside the state. For the purposes of liability for a county fuel tax, "distributor" has that meaning defined in the county ordinance imposing the tax. For the purposes of this subsection, "commercial motor vehicle" means any motor vehicle used, designed, or maintained for transportation of persons or property and: (a) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or (b) having three or more axles regardless of weight; or (c) is used in combination, when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. "Commercial motor vehicle" does not include recreational vehicles;

(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) "Alcohol" means alcohol that is produced from renewable resources;

(16) "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;

(17) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

(b) An intentional: Omission, failure to file a return or report, or other act of deception. [1995 c 287 § 1; 1995 c 274 § 20; 1993 c 54 § 1; 1991 c 339 § 13; 1990 c 250 § 79; 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.]

Reviser's note: This section was amended by 1995 c 274 § 20 and by 1995 c 287 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1990 c 250: See note following RCW 46.16.301.

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 State-wide motor vehicle fuel taxes. 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 (5) of this section.

(1) A motor vehicle fuel tax rate of seventeen cents per gallon shall apply to the sale, distribution, or use of motor vehicle fuel.

(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) (a), (b), and (c) 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) (a), (b), and (c) 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. After June 30, 1995, ninety-five percent of this revenue shall be deposited in the urban arterial trust account in the motor vehicle fund and five percent shall be deposited in the small city account in the motor vehicle fund.

(4) An additional motor vehicle 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) (a), (b), and (c) 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) An additional motor vehicle fuel tax rate of four cents per gallon from April 1, 1990, through March 31, 1991, and five cents per gallon from April 1, 1991, applies to the sale, distribution, or use of motor vehicle fuel. The proceeds from the additional tax rate under this subsection, reduced by an amount equal to the sum of the payments under RCW 46.68.090(1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor fuel tax rate provided in this section, shall be deposited in the motor vehicle fund and shall be distributed by the state treasurer according to RCW 46.68.095. [1994 c 179 § 30; 1991 c 342 § 57; 1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Purpose of state and local transportation funding program—1990 c 42: "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) State-wide system: Provide for preservation of the existing state-wide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a state-wide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) State-wide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

Headings—1990 c 42: "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

Severability—1990 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 42 § 503.]

Effective dates—Application—Implementation—1990 c 42: "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) *Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

***Reviser's note:** The bonds were fully defeased on June 1, 1990.

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. Every distributor shall on or before the twenty-fifth day of each calendar month file, on forms furnished by the department, a statement signed by the distributor or his or her 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 and, for counties within which an additional excise tax on motor vehicle fuel has been levied by that jurisdiction under RCW 82.80.010, showing the total number of gallons of motor vehicle fuel sold, distributed, or used by the distributor within the boundaries of the county during the preceding calendar month. As directed by the department, the distributor shall periodically submit with the statement, on forms furnished by the department, updated license information. [1996 c 104 § 1; 1994 c 262 § 18; 1993 c 54 § 2; 1991 c 339 § 14; 1990 c 42 § 202; 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.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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. [1991 c 339 § 2; 1989 c 378 § 24; 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.

82.36.045 Distributors—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation or conversion—Penalties, liability. (1) If the department determines that the tax reported by a motor vehicle fuel distributor is deficient, the department shall assess the deficiency on the basis of information available to it, and shall add a penalty of two percent of the amount of the deficiency.

(2) If a distributor, whether licensed or not licensed as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the distributor for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

(3) If a distributor files a false or fraudulent report with intent to evade the tax imposed by this chapter, the department shall add to the amount of deficiency a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsections (1) and (2) of this section and all other penalties prescribed by law.

(4) Motor vehicle fuel tax, penalties, and interest payable under this chapter bears 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 of it should have been paid until the date of payment. If a distributor establishes by a fair preponderance of evidence that the failure to pay the amount of tax due was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty. The department may waive the interest when it determines the cost of processing or collection of the interest exceeds the amount of interest due.

(5) Except in the case of a fraudulent report, neglect or refusal to make a report, or failure to pay or to pay the proper amount, the department shall assess the deficiency under subsection (1) or (2) of this section within five years from the last day of the succeeding calendar month after the reporting period for which the amount is proposed to be determined or within five years after the return is filed, whichever period expires later.

(6) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interest

of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(7) A distributor against whom an assessment is made under subsection (1) or (2) of this section may petition for a reassessment within thirty days after service upon the distributor of notice of the assessment. If the petition is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the distributor has so requested in its petition, shall grant the distributor an oral hearing and give the distributor twenty days' notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service of notice upon the distributor.

An assessment made by the department becomes due and payable when it becomes final. If it is not paid to the department when due and payable, the department shall add a penalty of ten percent of the amount of the tax.

(8) In a suit brought to enforce the rights of the state under this chapter, the assessment showing the amount of taxes, penalties, interest, and cost unpaid to the state is prima facie evidence of the facts as shown.

(9) A notice of assessment required by this section must be served personally or by mail. If it is served by mail, service shall be made by deposit of the notice in the United States mail, postage prepaid, addressed to the distributor at the most current address furnished to the department.

(10) The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her 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 is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [1996 c 104 § 2; 1991 c 339 § 1.]

82.36.047 Assessments—Warrant; Lien. When an assessment becomes final in accordance with 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, interest, and a filing fee of five dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the 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 distributor mentioned in the warrant, the amount of the tax, penalties, interest, and filing fee, and the

date when the warrant was filed: The aggregate amount of the warrant as docketed becomes a lien upon the title to and interest in all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is 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 a civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee of five dollars. [1991 c 339 § 4.]

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—Investigation—Fee—Penalty for false statement—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.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the

license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

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.

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 or her 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 or her license. [1996 c 104 § 3; 1994 c 262 § 19; 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—Refusal of issuance—Inspection of records. 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 or her principal place of business. The department may refuse to issue or may revoke a motor vehicle fuel distributor license, to a person:

(1) Who formerly held a motor vehicle fuel distributor's license that, before the time of filing for application, has been revoked or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license has been revoked or canceled for cause;

(3) Who, as an individual licensee or officer, director, owner, or managing employee of a nonindividual licensee, has had a motor vehicle fuel distributor license revoked or canceled for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, *82.37, 82.38, 82.42, or 46.87 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or

subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, corporate officer, director, owner, or managing employee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such a refusal or revocation, the department shall grant the applicant a hearing and shall give the applicant at least twenty days' written notice of the time and place of the hearing.

For the purpose of considering an application for a distributor's license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

The department may, in the exercise of reasonable discretion, suspend a motor vehicle distributor license at any time before and pending such a hearing for unpaid taxes or reasonable cause. [1996 c 104 § 4; 1994 c 262 § 20; 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.]

*Reviser's note: Chapter 82.37 RCW was repealed by 1995 c 274 § 3.

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 department 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 department 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 department 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 department against any person under the provisions of this chapter. [1993 c 54 § 3; 1961 c 15 § 82.36.110. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

82.36.120 Delinquency—Notice to debtors—Lien.

If a distributor is delinquent in the payment of an obligation imposed under this chapter, the department may give notice of the amount of the 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 distributor, or owing any debts to such distributor at the time of receipt by them of such notice. Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice. A person so notified shall neither transfer nor make any 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 deliver upon demand the 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 the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1994 c 262 § 21; 1991 c 339 § 3; 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 or her principal place of business in this state, for a period of five years, records of motor vehicle fuel received, sold, distributed, or used by the distributor, 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. [1996 c 104 § 5; 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 department shall revoke the license of any distributor refusing or neglecting to comply with any provision of this chapter. The department 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 department 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 department may cancel the license of any distributor upon investigation and sixty days notice mailed to the last known address of such distributor if the department 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, 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 department shall cancel the bond filed by the distributor. [1990 c 250 § 80; 1961 c 15 § 82.36.190. Prior: 1933 c 58 § 14; RRS § 8327-14.]

Severability—1990 c 250: See note following RCW 46.16.301.

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.]

82.36.230 Exemptions—Imports, exports, federal sales. The provisions of this chapter requiring the payment of taxes do not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a qualified distributor 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 department at such times, on such forms, and in such detail as the department may require, otherwise the exemption granted in this section is null and void, and all fuel shall be considered distributed in this state fully subject to the provisions of this chapter. Each invoice covering exempt sales 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 sales by a licensed distributor of motor vehicle fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the department may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or

monitoring, or both, of the sales or movement of motor vehicle fuel in that state or foreign jurisdiction.

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 department, 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 do 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.

The department may at any time require of any distributor any information the department 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 department is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms to be used by distributors in reporting to the department 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 department may forward to such officials any information which the department 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. [1993 c 54 § 4; 1989 c 193 § 1; 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.]

82.36.245 Exemption—Sales to foreign diplomatic and consular missions. Sales of motor vehicle fuel to qualified foreign diplomatic and consular missions and their qualified personnel, made under rules prescribed by the director, are exempt from the tax imposed under this chapter if the foreign government represented grants an equivalent

exemption to missions and personnel of the United States performing similar services in the foreign country. Only those foreign diplomatic and consular missions and their personnel which are determined by the United States department of state as eligible for the tax exemption, may claim this exemption under rules prescribed by the director. [1989 c 193 § 2.]

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

(c) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter; 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. [1993 c 141 § 1; 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 persons with special transportation needs by nonprofit transportation providers. A private, nonprofit transportation provider regulated 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 transportation services for persons with special transportation needs, 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. [1996 c 244 § 5; 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.]

82.36.305 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, if it is a corporation, by some proper officer of the corporation, or if it is a limited liability company, by some proper manager or member of the limited liability company. [1995 c 318 § 3; 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.]

Effective date—1995 c 318: See note following RCW 82.04.030.

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 90.56.900.

Coastal protection fund: RCW 90.48.390 and 90.48.400.

Definitions: RCW 90.56.010.

Rules and regulations: RCW 90.56.050 and 90.56.900.

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—Penalties. (1) It is unlawful for a person or corporation to evade a tax or fee imposed under this chapter.

(2) Evasion of taxes or fees under this chapter is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the transportation fund of the state. [1995 c 287 § 2; 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 or her 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, is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. 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. [1996 c 104 § 6; 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 levied in this chapter 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, except as provided in RCW 82.80.010 and 82.47.020. [1991 c 173 § 4; 1990 c 42 § 204; 1979 ex.s. c 181 § 5; 1961 c 15 § 82.36.440. Prior: 1933 c 58 § 23; RRS § 8327-23.]

Effective date—1991 c 173: See note following RCW 82.47.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.]

82.36.450 Agreement with tribe for imposition, collection, use. The department of licensing may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding the imposition, collection, and use of this state's motor vehicle fuel tax, or the budgeting or use of moneys in lieu thereof, upon terms substantially the same as those in the consent decree entered by the federal district court (Eastern District of Washington) in *Confederated Tribes of the Colville Reservation v. DOL, et al.*, District Court No. CY-92-248-JLO. [1995 c 320 § 2.]

Legislative recognition, belief—1995 c 320: "The legislature recognizes that certain Indian tribes located on reservations within this state

dispute the authority of the state to impose a tax upon the tribe, or upon tribal members, based upon the distribution, sale, or other transfer of motor vehicle and other fuels to the tribe or its members when that distribution, sale, or other transfer takes place upon that tribe's reservation. While the legislature believes it has the authority to impose state motor vehicle and other fuel taxes under such circumstances, it also recognizes that all of the state citizens may benefit from resolution of these disputes between the respective governments." [1995 c 320 § 1.]

Severability—1995 c 320: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 320 § 4.]

Effective date—1995 c 320: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 320 § 5.]

Chapter 82.38 SPECIAL FUEL TAX ACT

Sections

82.38.010	Statement of purpose.
82.38.020	Definitions.
82.38.030	Tax imposed—Special fuel for import exempt—Variable rate to be computed—Collection—Misappropriation or conversion—Penalties, liability.
82.38.040	Deliveries not requiring tax collection.
82.38.050	Tax liability on leased motor vehicles.
82.38.060	Tax computation on mileage basis.
82.38.070	Refunds for worthless accounts receivable.
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.
82.38.080	Exemptions.
82.38.082	Exemptions—Special fuel used in logging operations on federal land.
82.38.086	Intent—Reflection of tax credit in price.
82.38.090	Special fuel dealers', users' licenses—Collection of tax.
82.38.100	Trip permits.
82.38.110	Application for license—Investigation—Fee—Penalty for false statement—Bond—Requirements.
82.38.120	Issuance of license—Refusal—Inspection of records—Posting—Display—Duration—Transferability.
82.38.130	Revocation, cancellation, and surrender of license—Bond.
82.38.140	Special fuel records.
82.38.150	Periodic tax reports.
82.38.160	Computation and payment of tax—Electronic funds transfer.
82.38.170	Civil and statutory penalties—Deficiency assessments—Interest—Mitigation of assessments—Cancellation of vehicle registrations.
82.38.180	Refunds and credits.
82.38.190	Procedures for claiming refunds or credits.
82.38.200	Suits for recovery of taxes illegally or erroneously collected.
82.38.210	Tax lien—Filing required.
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—Lien.
82.38.230	Delinquency—Seizure and sale of property.
82.38.235	Warrant on assessment—Superior court filing—Lien—Writs of execution and garnishment.
82.38.240	Delinquency—Collection by civil action.
82.38.250	Remedies cumulative.
82.38.260	Administration and enforcement.
82.38.265	Administration, collection, and enforcement of taxes pursuant to chapter 82.41 RCW.
82.38.270	Violations—Penalties.
82.38.275	Investigatory power.
82.38.280	State preempts tax field.
82.38.290	Disposition of funds.
82.38.300	Judicial review and appeals.
82.38.310	Agreement with tribe for imposition, collection, use.
82.38.900	Section captions.

82.38.910 Short title.

82.38.920 Severability—1971 ex.s. c 175.

82.38.930 Effective date—1971 ex.s. c 175.

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 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) "Service station" means any location at which fueling of motor vehicles is offered to the general public.

(10) "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.

(11) "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; or (c) such other instruments as the department may determine and prescribe by rule to protect the interests of the state and to insure compliance of the requirements of this chapter.

(12) "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.

(13) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(14) "Standard pressure and temperature" means fourteen and seventy-three hundredths pounds of pressure per square inch at sixty degrees Fahrenheit.

(15) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

(b) An intentional: Omission, failure to file a return or report, or other act of deception. [1995 c 287 § 3; 1994 c 262 § 22; 1988 c 122 § 1; 1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

82.38.030 Tax imposed—Special fuel for import exempt—Variable rate to be computed—Collection—Misappropriation or conversion—Penalties, liability. (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, except sales of special fuel for export. To claim an exemption on account of sales by a licensed special fuel dealer for export, the purchaser shall obtain from the selling special fuel dealer, and such selling special fuel dealer must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of special fuel in that state or foreign jurisdiction.

(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.

(4) The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her 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 is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [1996 c 104 § 7; 1989 c 193 § 3; 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 Deliveries not requiring tax collection. 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. [1990 c 250 § 81; 1973 1st ex.s. c 156 § 2; 1971 ex.s. c 175 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

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 the user for thirty days or more 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 or renting 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 or she is the lessee from 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 the application for a special fuel user's license one copy of the lease form or

service contract the lessor enters into with the various lessees of the lessor's motor vehicles. When the special fuel user's license has been secured, such lessor shall make and assign to each motor vehicle leased for interstate operation a photocopy of such license to be carried in the cab compartment of the 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 the license issued and its return to the lessor 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 less than thirty days. [1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

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, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight. [1996 c 90 § 1; 1989 c 142 § 1; 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. 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. [1990 c 250 § 83; 1971 ex.s. c 175 § 8.]

Severability—1990 c 250: See note following RCW 46.16.301.

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 or milk picked up from a farm or dairy farm storage tank 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 or milk picked up: **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; and (c) the department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter; (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) transportation services for persons with special transportation needs by a private, nonprofit transportation provider regulated 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. [1996 c 244 § 6; 1993 c 141 § 2; 1990 c 185 § 1; 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.]

82.38.086 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.]

*Reviser's note: RCW 82.38.085 expired December 31, 1992.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.38.090 Special fuel dealers', users' licenses—Collection of tax. It shall be unlawful for any person to act as a special fuel dealer or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's or a special fuel user's license issued to him or her by the department.

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 or dealer without collecting the special fuel tax. Special fuel dealers, 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. Special authorization may be given to farmers,

logging companies, and construction companies to purchase special fuel directly into the supply tanks of nonhighway equipment or into portable slip tanks for nonhighway use without payment of the special fuel tax.

Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [1995 c 20 § 13; 1994 c 262 § 23; 1993 c 54 § 6; 1991 c 339 § 6; 1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

Severability—1995 c 20: See RCW 70.149.901.

Severability—1990 c 250: See note following RCW 46.16.301.

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—Investigation—Fee—Penalty for false statement—Bond—Requirements. Application for a special fuel dealer'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.

Every application for a special fuel dealer's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

No special fuel dealer's license may 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 or her 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 dealers who only deliver special fuel into the fuel tanks of marine vessels.

The department may require a special fuel user to post a bond if the special fuel user, after having been licensed, has failed to file timely reports or has failed to remit taxes due, or when an investigation or audit indicates problems

severe enough that the department, in its discretion, determines that a bond is required to protect the interests of the state. The department may also adopt rules prescribing conditions that, in the department's discretion, require a bond to protect the interests of the state.

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 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. [1996 c 104 § 8; 1988 c 122 § 2; 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—Inspection of records—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 or a special fuel user. However, the department may refuse to issue a special fuel dealer'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;

(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;

(3) Who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, or 46.87 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, officer, director, owner, or managing employee of a nonindividual licensee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant the applicant at least twenty 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. For the purpose of considering any application for a special fuel dealer's license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

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 or her 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 may use special fuel in motor vehicles owned or operated by the dealer without securing a license as a special fuel user but the dealer is subject to all other conditions, requirements, and liabilities imposed herein upon a special fuel user.

Each special fuel dealer'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 or special fuel user's license shall be transferable. [1996 c 104 § 9; 1995 c 274 § 21; 1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.130 Revocation, cancellation, and surrender of license—Bond. The department may revoke the license of any special fuel dealer, 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, or a special fuel user immediately upon surrender thereof by the holder.

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 RCW 82.38.020(11), 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 RCW 82.38.020(11) 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 or her license. [1994 c 262 § 24; 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 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 five 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)(a) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.

(b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(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 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 the dealer's permanent records for the time and purposes above provided.

(5) Every special fuel user shall keep, in addition to the dealer's 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.

(6) Subsections (1)(f), (2)(b), and (5) of this section do not apply to special fuel users when the special fuel is used off-highway in farming, construction, or logging operations. Upon filing a special fuel user tax report, every such special fuel user shall certify and bear the burden of proof as to the number of gallons of special fuel used off-highway. [1996 c 104 § 10; 1996 c 90 § 2; 1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

Reviser's note: This section was amended by 1996 c 90 § 2 and by 1996 c 104 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

82.38.150 Periodic tax reports. For the purpose of determining the amount of liability for the tax herein imposed, and to periodically update license information, each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department. Special fuel dealers shall file the reports at the 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

Special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly.

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 the licensee's 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 is 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. For counties within which an additional excise tax on special fuel has been levied by that jurisdiction under RCW 82.80.010, the report must show the quantities of special fuel sold, distributed, or withdrawn from bulk storage by the reporting dealer or user within the county's boundaries and the tax liability from its levy. 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, has 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 82.38.080 (1), (2), (3), (8), and (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. [1996 c 104 § 11; 1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1988 c 23: "This act shall take effect January 1, 1989." [1988 c 23 § 2.]

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—Mitigation of assessments—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 may 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 or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report, the department may, 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 or her 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 willful, 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 violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) 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 five 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 five years after the return is filed, whichever period expires the later.

(9) 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 or her 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.

(10) 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 or her address as the same appears in the records of the department.

(11) Any licensee who has had either their special fuel user license or special fuel dealer license, or both, revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) 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. [1996 c 104 § 12; 1995 c 274 § 24; 1994 c 262 § 25; 1991 c 339 § 7; 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). The department shall refund any amount paid that has been verified by the department to be more than ten dollars over the amount actually due for the reporting period. Payment credits shall not be carried forward and applied to subsequent tax returns.

(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. [1996 c 91 § 4; 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—1996 c 91: See note following RCW 46.87.150.

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 franchis-

es, 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—Lien. 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.

Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice.

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 the party named in the notice to withhold and deliver for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1994 c 262 § 26; 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 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 or she may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer 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. [1995 c 274 § 25; 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—Penalties. (1) It is unlawful for a person or corporation to evade a tax or fee imposed under this chapter.

(2) Evasion of taxes or fees under this chapter is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the transportation fund of the state. [1995 c 287 § 4; 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 levied in this chapter 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, except as provided in RCW 82.80.010 and 82.47.020. [1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

Effective date—1991 c 173: See note following RCW 82.47.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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 34.05 RCW. [1971 ex.s. c 175 § 31.]

82.38.310 Agreement with tribe for imposition, collection, use. The department of licensing may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding the imposition, collection, and use of this state's special fuel tax, or the budgeting or use of moneys in lieu thereof, upon terms substantially the same as those in the consent decree entered by the federal district court (Eastern District of Washington) in *Confederated Tribes of the Colville Reserva-*

tion v. DOL, et al., District Court No. *CY-92-248-JLO*. [1995 c 320 § 3.]

Legislative recognition, belief—Severability—Effective date—1995 c 320: See notes following RCW 82.36.450.

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

82.41.010	Purpose.
82.41.020	Definitions.
82.41.030	Motor fuel tax cooperative agreement authorized— Prohibition.
82.41.040	Amount of tax collected for 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 Amount of tax collected for 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 chapter 82.38 RCW. [1995 c 274 § 26; 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 34.05 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—Misappropriation or conversion—Penalties, liability.
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—Application—Investigation—Fee—Penalty for false statement.
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, 82.36.070, 82.36.110 through 82.36.140 made applicable.
82.42.070	Imports, exports, sales to United States government exempted—Procedure—Sales to state or political subdivisions not exempt—Refund procedures.
82.42.080	Violations—Penalty.
82.42.090	Tax proceeds—Disposition—Aeronautics account.
82.42.100	Enforcement.
82.42.110	Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement.
82.42.120	Mitigation of assessments.
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—Misappropriation or conversion—Penalties, liability. 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.

The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her 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 is guilty of a felony, or gross

misdeemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [1996 c 104 § 13; 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 sold for export, nor 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.

To claim an exemption on account of sales by a licensed distributor of aircraft fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which

is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of aircraft fuel in that state or foreign jurisdiction. [1989 c 193 § 4; 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—Application—Investigation—Fee—Penalty for false statement.

The director shall by rule and regulation adopted as provided in chapter 34.05 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.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department

personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [1996 c 104 § 14; 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, 82.36.070, 82.36.110 through 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. RCW 82.36.070 applies to the issuance, refusal, or revocation of a license issued under this chapter. 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. [1996 c 104 § 15; 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, is guilty of a gross misdemeanor. [1996 c 104 § 16; 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. 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 transportation fund of 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. [1995 c 170 § 1; 1991 sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

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

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—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.

82.42.120 Mitigation of assessments. Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter. [1991 c 339 § 8.]

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

Sections	
82.44.010	Definitions.
82.44.015	Ride-sharing passenger motor vehicles excluded—Notice—Liability for tax.
82.44.020	Basic, additional, and clean air excise tax imposed—Exceptions—Liability of residents for out-of-state licensing.
82.44.023	Exemption—Rental cars.
82.44.025	Exemption—Vehicles of Taipei Economic and Cultural Office.
82.44.030	Tax on motor vehicle dealers.
82.44.041	Valuation of vehicles.
82.44.060	Payment of tax based on registration year—Transfer of ownership.
82.44.065	Appeal of valuation.
82.44.080	Tax additional.
82.44.090	Penalty for issuing plates without collecting tax.
82.44.100	Tax receipt.

(1996 Ed.)

82.44.110	Disposition of revenue.
82.44.120	Refunds, collections of erroneous amounts—Claims—False statement, penalty.
82.44.130	Ad valorem taxation barred.
82.44.140	Director of licensing may act.
82.44.150	Apportionment and distribution of motor vehicle excise taxes generally.
82.44.155	Distribution to cities and towns.
82.44.157	Transfer of funds pursuant to government service agreement.
82.44.160	Distribution to municipal research council.
82.44.170	Computation of excise taxes when commingled with licensing fees.
82.44.180	Transportation fund—Deposits and distributions.
82.44.190	Transportation infrastructure account—Deposits and distributions—Subaccounts.
82.44.195	Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262.
82.44.900	Severability—Construction—1961 c 15.

Boat trailer fee: RCW 46.16.670.

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 Definitions. For the purposes of this chapter, unless [the] context otherwise requires:

(1) "Department" means the department of licensing.

(2) "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 (a) vehicles carrying exempt licenses, (b) 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, (c) motor vehicles or their trailers used entirely upon private property, (d) mobile homes and travel trailers as defined in RCW 82.50.010, or (e) 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.

(3) "Truck-type power or trailing unit" means any vehicle that is subject to the fees under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, *46.16.080, 46.16.085, or 46.16.090. [1990 c 42 § 301; 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.]

*Reviser's note: RCW 46.16.080 was repealed by 1994 c 262 § 28, effective July 1, 1994.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.44.015 Ride-sharing passenger motor vehicles excluded—Notice—Liability for tax. For the purposes of this chapter, in addition to the exclusions under RCW 82.44.010, "motor vehicle" shall not include passenger motor vehicles used primarily for commuter ride sharing and ride sharing for persons with special transportation needs, as defined in RCW 46.74.010. The registered owner of one of these vehicles shall notify the department of licensing upon termination of primary use of the vehicle in commuter ride sharing or ride sharing for persons with special transportation needs and shall be liable for the tax imposed by this chapter, prorated on the remaining months for which the vehicle is licensed.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program. [1996 c 244 § 7; 1993 c 488 § 3; 1982 c 142 § 1; 1980 c 166 § 3.]

Finding—Annual recertification rule—Report—1993 c 488: See notes following RCW 82.08.0287.

Severability—1980 c 166: See note following RCW 82.08.0287.

Ride-sharing vehicles—Special plates: RCW 46.16.023.

82.44.020 Basic, additional, and clean air excise tax imposed—Exceptions—Liability of residents for out-of-state licensing. (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 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 value of such vehicle.

(3) Effective with October 1992 motor vehicle registration expirations, a clean air excise tax is imposed in addition to any other tax imposed by this section for the privilege of using in the state any motor vehicle as defined in RCW

82.44.010, except that farm vehicles as defined in RCW 46.04.181 shall not be subject to the tax imposed by this subsection. The annual amount of the additional excise tax shall be two dollars and twenty-five cents. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars.

(4) An additional excise tax is imposed on truck-type power units that are used in combination with a trailer to transport loads in excess of forty thousand pounds combined gross weight. The annual amount of such additional excise tax shall be fifty-eight one-hundredths of one percent of the value of the vehicle.

The department shall distribute the additional tax collected under this subsection as follows:

(a) For each trailing unit subject to subsection (5) of this section, an amount equal to the clean air excise tax prescribed in subsection (3) of this section shall be distributed in the manner prescribed in RCW 82.44.110(3);

(b) Of the remainder of the additional excise tax collected under this subsection, ten percent shall be distributed in the manner prescribed in RCW 82.44.110(2) and ninety percent shall be distributed in the manner prescribed in RCW 82.44.110(1). This tax shall not apply to power units used exclusively for hauling logs.

(5) The excise taxes imposed by subsections (1) through (3) of this section shall not apply to trailing units which are used in combination with a power unit subject to the additional excise tax imposed by subsection (4) of this section. This subsection shall not apply to trailing units used for hauling logs.

(6) In no case shall the total tax be less than two dollars except for proportionally registered vehicles.

(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. [1993 sp.s. c 23 § 61; 1993 c 123 § 2; 1991 c 199 § 220; 1990 c 42 § 302; 1988 c 191 § 1. Prior: 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.]

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.]

Air pollution control account: RCW 70.94.015.

82.44.023 Exemption—Rental cars. Rental cars as defined in RCW 46.04.465 are exempt from the taxes imposed in RCW 82.44.020 (1) and (2). When a rental car ceases to be used for rental car purposes and at the time of its retail sale, the excise tax imposed in RCW 82.44.020 (1) and (2) shall be imposed in an amount equal to one-twelfth of the annual excise tax then in effect, for each full month remaining in the vehicle's registration year. [1994 c 227 § 3; 1992 c 194 § 8.]

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

Estimate of lost revenue: RCW 82.08.0201.

82.44.025 Exemption—Vehicles of Taipei Economic and Cultural Office. Motor vehicles licensed under RCW 46.16.374 are exempt from the taxes imposed in RCW 82.44.020 (1) and (2). When the motor vehicle ceases to be used for the purposes of RCW 46.16.374 or at the time of its retail sale, the excise tax imposed in RCW 82.44.020 (1) and (2) must be imposed for twelve full months from the date of application of the new owner. [1996 c 139 § 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.

82.44.041 Valuation of vehicles. (1) For the purpose of determining the tax under this chapter, the value of a truck-type power or trailing unit shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90

3	83
4	75
5	67
6	59
7	52
8	44
9	36
10	28
11	21
12	13
13 or older	10

(2) The reissuance of title and registration for a truck-type power or trailing unit because of the installation of body or special equipment shall be treated as a sale, and the value of the truck-type power or trailing unit at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining the tax under this chapter, the value of a motor vehicle other than a truck-type power or trailing unit shall be the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model.

(b) The value determined in (a) of this subsection shall be divided by the applicable percentage listed in this subsection to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the vehicle for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	100
3	91
4	83
5	74
6	65
7	57
8	48
9	40
10	31
11	22
12	14
13 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a motor vehicle and equipment that are designed to facilitate the use or operation of the motor vehicle by a handicapped person. [1990 c 42 § 303.]

Transitional valuation method and tax limitation—1990 c 42: "Notwithstanding any other provision of this act, motor vehicles and travel trailers and campers that are valued under the system in effect before September 1, 1990, shall be valued by using the initial valuation of the vehicle under chapter 82.44 or 82.50 RCW multiplied by the applicable percentage under section 303 or 323 of this act [RCW 82.44.041 or 82.50.425]. Before December 1992 vehicle license expirations, no tax may be imposed on any motor vehicle or travel trailer or camper that is greater than one hundred ten percent of the tax imposed during the registration period in effect before September 1, 1990." [1990 c 42 § 326.] For codification of "this act" [1990 c 42], see Codification Tables, Volume 0.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.060 Payment of tax based on registration year—Transfer of ownership. The excise tax hereby imposed shall be due and payable to the department or its agents at the time of registration of a motor vehicle. Whenever an application is made to the department 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, 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. The excise tax upon a motor vehicle licensed for the first time in this state shall be levied for one full registration year commencing on the date of the calendar year designated by the department and ending on the same date of the next succeeding calendar year. For vehicles registered under chapter 46.87 RCW, proportional registration, and for vehicle dealer plates issued under chapter 46.70 RCW, the registration year is the period provided in those chapters: PROVIDED, 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. [1990 c 42 § 304; 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.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.

82.44.065 Appeal of valuation. If the department determines a value for a motor vehicle under RCW 82.44.041 equivalent to a manufacturer's base suggested retail price or the value of a truck-type power or trailing unit under RCW 82.44.041(2), any person who pays the tax under this chapter for that vehicle may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.44.120. [1990 c 42 § 305.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) 1.60 percent into the motor vehicle fund to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) 8.15 percent into the Puget Sound capital construction account in the motor vehicle fund.

(c) 4.07 percent into the Puget Sound ferry operations account in the motor vehicle fund.

(d) 5.88 percent into the general fund to be distributed under RCW 82.44.155.

(e) 4.75 percent into the municipal sales and use tax equalization account in the general fund created in RCW 82.14.210.

(f) 1.60 percent into the county sales and use tax equalization account in the general fund created in RCW 82.14.200.

(g) 62.6440 percent into the general fund through June 30, 1995, and 57.6440 percent into the general fund beginning July 1, 1995.

(h) 5 percent into the transportation fund created in RCW 82.44.180 beginning July 1, 1995.

(i) 5.9686 percent into the county criminal justice assistance account created in RCW 82.14.310.

(j) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320.

(k) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330.

(l) 2.95 percent into the county public health account created in RCW 70.05.125.

Notwithstanding (i) through (k) of this subsection, no more than sixty million dollars shall be deposited into the accounts specified in (i) through (k) of this subsection for the period January 1, 1994, through June 30, 1995. Not more than five percent of the funds deposited to these accounts shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Motor vehicle excise tax funds appropriated for such enhancements shall not supplant existing funds from the state general fund. For the fiscal year ending June 30, 1998, and for each fiscal year thereafter, the amounts deposited into the accounts specified in (i) through (k) of this subsection shall not increase by more than the amounts deposited into those accounts in the previous fiscal year increased by the implicit price deflator for the previous fiscal year. Any revenues in excess of this amount shall be deposited into the general fund.

(2) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(2) into the transportation fund.

(3) The state treasurer shall deposit the excise tax imposed by RCW 82.44.020(3) into the air pollution control account created by RCW 70.94.015. [1995 1st sp.s. c 15 § 2; 1995 c 398 § 14. Prior: 1993 sp.s. c 21 § 7; 1993 c 492 § 253; 1993 c 491 § 1; 1991 c 199 § 221; 1990 2nd ex.s. c 1 § 801; 1990 c 42 § 306; 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.]

Reviser's note: This section was amended by 1995 c 398 § 14 and by 1995 1st sp.s. c 15 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 1st sp.s. c 15: See note following RCW 82.44.110.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Effective date—1993 c 491: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993." [1993 c 491 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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, collections of erroneous amounts—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 determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor 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.

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 or she has paid an erroneously excessive amount of excise tax, the department 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 and a vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ten 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 collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

Any claim for refund of an erroneously excessive amount of excise tax or overpayment of excise tax with a motor vehicle license fee must be filed with the director within three years after the claimed erroneous payment was made.

If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make

such approved refunds 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 or she obtains any amount of refund to which he or she is not entitled under the provisions of this section is guilty of a gross misdemeanor. [1993 c 307 § 3; 1990 c 42 § 307; 1989 c 68 § 2; 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.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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. (1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by RCW 82.44.020 (1) and (2) remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.030, 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(3) and 82.44.030, 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 shall, from motor vehicle excise taxes deposited in the general fund, under RCW 82.44.110(1)(g), make the following deposits:

(a) To the high capacity transportation account created in RCW 47.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax within each county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders; except that in a case of a municipality located in a county that has a population of one hundred seventy-five thousand or more that does not have an interstate highway located within its borders, that sum shall be deposited in the passenger ferry account;

(b) To the central Puget Sound public transportation account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within a county with a population of one million or more and a county with a population of from two hundred thousand to less than one million bordering a county with a population of one million or more, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(b) applies; however, any transfer under this subsection (2)(b) must be greater than zero;

(c) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within counties not described in (b) of this subsection, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(c) applies; however, any transfer under this subsection (2)(c) must be greater than zero; and

(d) To the general fund, for revenues distributed after June 30, 1993, and to the transportation fund, for revenues distributed after June 30, 1995, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy

and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent notwithstanding the requirements set forth in subsections (3) through (6) of this section, reduced by an amount equal to distributions made under (a), (b), and (c) of this subsection and RCW 82.14.046.

(3) 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, 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 (i) 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 (ii) the sales and use tax equalization distributions provided under RCW 82.14.046; 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, excluding the sales and use tax equalization distributions provided under RCW 82.14.046.

(4) 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 (3) 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 (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) 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 excluding the sales and use tax equalization distributions provided under RCW 82.14.046. 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.

(5) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section and

RCW 82.14.046 shall be remitted without legislative appropriation.

(6) 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 (3) of this section. [1995 2nd sp.s. c 14 § 538; 1994 c 241 § 1; 1993 c 491 § 2. Prior: 1991 c 309 § 5; 1991 c 199 § 222; (1991 c.363 § 159 repealed by 1991 c 309 § 6); 1990 c 42 § 308; 1988 c 18 § 1; prior: 1987 1st ex.s. c 9 § 8; 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.]

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective date—1993 c 491: See note following RCW 82.44.110.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Transitional distributions—1990 c 42: "Distributions under RCW 82.44.150 for excise taxes collected under RCW 35.58.273, before September 1, 1990, shall be under the provisions of RCW 82.44.150 as it existed before September 1, 1990." [1990 c 42 § 327.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1987 c 428: See note following RCW 47.78.010.

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.

82.44.155 Distribution to cities and towns. When distributions are made under RCW 82.44.150, the state treasurer shall apportion and distribute the motor vehicle excise taxes deposited into the general fund under RCW 82.44.110(1)(d) to the cities and towns ratably on the basis of population as last determined by the office of financial management. When so apportioned, the amount payable to each such city and town shall be transmitted to the city treasurer thereof, and shall be used by the city or town for the purposes of police and fire protection in the city or town, and not otherwise. If it is adjudged that revenue derived from the excise taxes imposed by RCW 82.44.020 (1) and (2) 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. [1993 c 492 § 254; 1991 c 199 § 223; 1990 c 42 § 309.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.157 Transfer of funds pursuant to government service agreement. Funds that are distributed to cities or towns pursuant to RCW 82.44.150 may be transferred by the recipient city or town to another unit of local government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 14.]

82.44.160 Distribution to municipal research council. Before distributing moneys to the cities and towns from the general fund, as provided in RCW 82.44.155, and from the municipal sales and use tax equalization account, as provided in RCW 82.14.210, 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 RCW 82.44.150, which sum shall be apportioned and transmitted to the municipal research council, herein created. Sixty-five percent of the annual deduction shall be from the distribution to cities and towns under RCW 82.44.155, and thirty-five percent of the annual deduction shall be from the distribution to the municipal sales and use tax equalization account under RCW 82.14.210. 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 chair of the municipal research council or his or her designee. Payments to public agencies may be made in advance of actual work contracted for, in the discretion of the council.

Sixty-five percent of 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 RCW 82.44.155.

The remaining thirty-five percent shall be deposited into the municipal sales and use tax equalization account. [1995 c 28 § 1. Prior: 1990 c 104 § 3; 1990 c 42 § 310; 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.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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-three 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. [1990 c 42 § 311; 1987 c 244 § 56; 1985 c 380 § 22.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.

82.44.180 Transportation fund—Deposits and distributions. (1) The transportation fund is created in the state treasury. Revenues under RCW 82.44.020 (1) and (2), 82.44.110, 82.44.150, and the surcharge under RCW 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution.

(2) There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects within the region from which the funds are derived, solely for:

(a) Planning;

(b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW 81.104.015;

(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

(e) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.

(3) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(c) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects submitted by the public transportation systems from which the funds are derived, solely for:

(a) Planning;

(b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW 81.104.015;

(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(e) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources. [1995 c 269 § 2601. Prior: 1993 sp.s. c 23 § 64; 1993 c 393 § 1; 1991 c 199 § 224; 1990 c 42 § 312.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

Effective date—1993 c 393: See RCW 47.66.900.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts. The transportation infrastructure account is hereby created in the transportation fund. Public and private entities may deposit moneys in the transportation infrastructure account from federal, state, local, or private sources. Proceeds from bonds or other financial instruments sold to finance surface transportation projects from the transportation infrastructure account shall be deposited into the account. Principal and interest payments made on loans from the transportation infrastructure account shall be deposited into the account. Moneys in the account shall be available for purposes specified in RCW 82.44.195. Expenditures from the transportation infrastructure account shall be subject to appropriation by the legislature. To the extent required by federal law or regulations promulgated by the United States secretary of transportation, the state treasurer is authorized to create separate subaccounts within the transportation infrastructure account. [1996 c 262 § 2.]

Effective date—1996 c 262: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 262 § 5.]

82.44.195 Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262. The legislature finds that new financing mechanisms are necessary to provide greater flexibility and additional funds for needed transportation infrastructure projects in the state. The creation of a financing mechanism, like the one contained in section 350 of the national highway system designation act of 1995, P.L. 104-59, relating to a state infrastructure bank program, will enable the state and local jurisdictions to use federal, state, local, or private funds to construct surface transportation projects for various modes of transportation. It is the intent of the legislature that accounts be created in the state treasury and dedicated funding sources be established to generate revenue to support transportation projects financed with the proceeds of bonds or other financial instruments issued against this dedicated revenue and other revenues which may be available to these accounts. P.L. 104-59 allows the deposit of certain federal highway and transit funds into these accounts to leverage other forms of investment in transportation infrastructure by expanding the eligible uses of the federal funds. Other public and private entities may also deposit funds into these accounts to leverage transportation investments. The purpose of chapter 262, Laws of 1996 is to provide, from these accounts, authorization for loans, grants, or other means of assistance, in amounts equal to all or part of the cost, to public or private entities building surface transportation facilities in this state. It is the further intent of the legislature that projects representing critical mobility or economic development needs and involving various transportation modes and jurisdictions receive top priority in the use of these funds. Funds from the accounts created in chapter 262, Laws of 1996 may be used to support the issuance of public or private debt, to provide credit enhancement for such debt, for direct loans to public or private entities, or for other purposes necessary to facilitate investment in surface transportation facilities in this state. [1996 c 262 § 1.]

Effective date—1996 c 262: See note following RCW 82.44.190.

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," "total consideration paid or contracted to be paid," defined.
- 82.45.032 "Real estate," "real property," "used mobile home," "mobile home," "used floating home," and "floating home" defined.
- 82.45.033 "Controlling interest" 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 and fee—Evidence of payment—Recording—Sale of beneficial interest.
- 82.45.100 Tax payable at time of sale—Interest, penalties, on unpaid or delinquent taxes—Prohibition on certain assessments or refunds—Deposit of penalties.
- 82.45.105 Single family residential property, tax credit when subsequent transfer of within nine months for like property.
- 82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Real estate excise tax affidavit form—Departmental audit.
- 82.45.180 Disposition of proceeds—Support of common schools—Local real estate excise tax account.
- 82.45.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.

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.]

82.45.010 "Sale" defined. (1) 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 at the purchaser's direction, and

title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department of revenue shall adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department shall consider the following:

(a) Persons shall be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(b) When persons are not commonly owned or controlled, they shall be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

(3) The term "sale" shall not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) 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.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The 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.

(f) 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.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(j) 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.

(k) 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.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers 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 three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

(o) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue Code of 1986, as amended. [1993 sp.s. c 25 § 502; 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.]

Findings—Intent—1993 sp.s. c 25: "(1) The legislature finds that transfers of ownership of entities may be essentially equivalent to the sale of real property held by the entity. The legislature further finds that all transfers of possession or use of real property should be subject to the same excise tax burdens.

(2) The legislature intends to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1993 sp.s. c 25 § 501.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.]

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," "total consideration paid or contracted to be paid," defined. (1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(2) If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price shall be the true and fair value of the real property owned by the entity and located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to subsection (4) of this section.

(3) As used in this section, "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, 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.

Total consideration shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price. [1993 sp.s. c 25 § 503; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

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 any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. The term includes used mobile homes, used floating homes, and improvements constructed upon leased land.

(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. [1993 sp.s. c 25 § 504; 1986 c 211 § 1; 1984 c 192 § 1; 1979 ex.s. c 266 § 1. Formerly RCW 28A.45.032.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

82.45.033 "Controlling interest" defined. As used in this chapter, the term "controlling interest" has the following meaning:

(1) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(2) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity. [1993 sp.s. c 25 § 505.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

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.]

***Reviser's note:** RCW 79.71.110 was repealed by 1991 c 352 § 11.

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 and fee—Evidence of payment—Recording—Sale of beneficial interest. (1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, 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. In collecting the tax the treasurer shall act 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.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale shall be reported to the department of revenue within five days from the date of the sale on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns shall be signed by both the transferor and the transferee and shall be accompanied by payment of the tax due. Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter shall be guilty of perjury. [1993 sp.s. c 25 § 506; 1991 c 327 § 6; 1990 c 171 § 7; 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.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—1990 c 171 §§ 6, 7, 8: "Sections 6, 7, and 8 of this act shall take effect July 1, 1990." [1990 c 171 § 11.]

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, penalties, on unpaid or delinquent taxes—Prohibition on certain assessments or refunds—Deposit of penalties. (*Effective until January 1, 1997.*) (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) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within thirty days of the date due, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within sixty days of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within ninety days of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee shall be personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

(a) An instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale.

(4) 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 and penalties as provided in subsections (1) and (2) 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, an additional penalty of fifty percent of the additional tax found to be due shall be added.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected pursuant to subsection (2) of this section shall be deposited in the housing trust fund as described in chapter 43.185 RCW. [1993 sp.s. c 25 § 507; 1988 c 286 § 5; 1982 c 176 § 1; 1981 c 167 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties. (*Effective January 1, 1997.*) (1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter shall bear interest at the rate of one percent per month from the time of sale until the date of payment.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee shall be personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

(a) An instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale.

(4) 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 and penalties as provided in subsections (1) and (2) of this section. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected under subsection (2) of this section and RCW 82.32.090 (2) through (6) shall be deposited in the housing trust fund as described in chapter 43.185

RCW. [1996 c 149 § 5; 1993 sp.s. c 25 § 507; 1988 c 286 § 5; 1982 c 176 § 1; 1981 c 167 § 2.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

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.]

82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Real estate excise tax affidavit form—Departmental audit. (*Effective until January 1, 1997.*) All of chapter 82.32 RCW, except RCW 82.32.030, 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 prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right of way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter. [1994 c 137 § 1; 1993 sp.s. c 25 § 509; 1981 c 167 § 1; 1980 c 154 § 5.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—1993 sp.s. c 25: See note following RCW 82.45.010.

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.

82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Real estate excise tax affidavit form—Departmental audit. (*Effective January 1, 1997.*) All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090 (1) and (8), 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 prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right of way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter. [1996 c 149 § 6; 1994 c 137 § 1; 1993 sp.s. c 25 § 509; 1981 c 167 § 1; 1980 c 154 § 5.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—1993 sp.s. c 25: See note following RCW 82.45.010.

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—Local real estate excise tax account. (1) For taxes collected by the county under this chapter, the county treasurer shall collect a two-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. The county treasurer shall place one percent of the proceeds of the tax imposed by this chapter and the treasurer's fee 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 state treasurer shall deposit the proceeds in the general fund for the support of the common schools.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax in the general fund for the support of the common schools. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as

provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation. [1993 sp.s. c 25 § 510; 1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

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.

82.45.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW. See RCW 82.46.900.

Chapter 82.46

COUNTIES AND CITIES—EXCISE TAX ON REAL ESTATE SALES

Sections

- 82.46.010 Tax on sale of real property authorized—Proceeds dedicated to local capital projects—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.
- 82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance.
- 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.
- 82.46.070 Additional excise tax—Acquisition and maintenance of conservation areas.
- 82.46.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.

82.46.010 Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates. (1) The legislative authority of any county or city shall identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and shall indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority 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. The revenues from this tax shall be used by any city or county with a population of five thousand or less and any city or county that does not plan under RCW 36.70A.040 for

any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.

After April 30, 1992, revenues generated from the tax imposed under this subsection in counties over five thousand population and cities over five thousand population that are required or choose to plan under RCW 36.70A.040 shall be used solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (a) pledged by such counties and cities to debt retirement prior to April 30, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to April 30, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(3) In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority 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.

(4) 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.

(5) 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.

(6) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative and/or judicial facilities; river and/or waterway flood control projects by those jurisdictions that, prior to June 11, 1992, have expended funds derived from the tax authorized by this section for such purposes; and, until December 31, 1995, housing projects for those jurisdictions that, prior to June 11, 1992, have expended or committed to expend funds derived from the tax authorized by this section or the tax authorized by RCW 82.46.035 for such purposes. [1994 c 272 § 1; 1992 c 221 § 1; 1990 1st ex.s. c 17 § 36; 1982 1st ex.s. c 49 § 11.]

Legislative declaration—1994 c 272: "The legislature declares that, in section 13, chapter 49, Laws of 1982 1st ex. sess., effective July 1, 1982, its original intent in limiting the use of the proceeds of the tax authorized in RCW 82.46.010(2) to "local capital improvements" was to include in such expenditures the acquisition of real and personal property associated with such local capital improvements. Any such expenditures made by cities, towns, and counties on or after July 1, 1982, are hereby declared to be authorized and valid." [1994 c 272 § 2.]

Expenditures prior to June 11, 1992: "All expenditures of revenues collected under RCW 82.46.010 made prior to June 11, 1992, are deemed to be in compliance with RCW 82.46.010." [1992 c 221 § 4.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

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.]

***Reviser's note:** RCW 82.46.010 was amended by 1992 c 221 § 1, changing subsection (2) to subsection (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 this chapter 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.

(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. [1992 c 221 § 2; 1990 1st ex.s. c 17 § 37; 1982 1st ex.s. c 49 § 13.]

***Reviser's note:** RCW 82.46.010(1) was renumbered RCW 82.46.010(2) by 1992 c 221 § 1.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (1) The legislative authority of any county or city shall identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and shall indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) 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-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first 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.

(3) Revenues generated from the tax imposed under subsection (2) of this section shall be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section shall be deposited in a separate account.

(5) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks.

(6) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section shall be

temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance. [1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Reviser's note: This section was amended by 1992 c 221 § 3 without cognizance of its amendment by 1991 sp.s. c 32 § 33. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Sections headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.46.040 Tax is lien on property—Enforcement.

Any tax imposed under this chapter or RCW 82.46.070 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. [1990 1st ex.s. c 17 § 39; 1990 1st ex.s. c 5 § 4; 1982 1st ex.s. c 49 § 14.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 4 and by 1990 c 17 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

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 this chapter 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. [1990 1st ex.s. c 17 § 40; 1982 1st ex.s. c 49 § 15.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

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 this chapter or RCW 82.46.070 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 this chapter or RCW 82.46.070 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. [1990 1st ex.s. c 17 § 41; 1990 1st ex.s. c 5 § 5; 1982 1st ex.s. c 49 § 16.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 5 and by 1990 1st ex.s. c 17 § 41, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.070 Additional excise tax—Acquisition and maintenance of conservation areas. (1) Subject to subsection (2) of this section, the legislative authority of any county may impose an additional excise tax on each sale of real property in the county at a rate not to exceed one percent of the selling price. The proceeds of the tax shall be used exclusively for the acquisition and maintenance of conservation areas.

The taxes imposed under this subsection shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except:

- (a) The tax shall be the obligation of the purchaser; and
- (b) The tax does not apply to the acquisition of conservation areas by the county.

The county may enforce the obligation through an action of debt against the purchaser or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages.

The tax shall take effect thirty days after the election at which the taxes are authorized.

(2) No tax may be imposed under subsection (1) of this section unless approved by a majority of the voters of the county voting thereon for a specified period and maximum rate after:

- (a) The adoption of a resolution by the county legislative authority of the county proposing this action; or
- (b) The filing of a petition proposing this action with the county auditor, which petition is signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted at the last preceding general election.

The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to this general election that has been called for such purpose by the county legislative authority.

(3) A plan for the expenditure of the excise tax proceeds shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and a public hearing shall be held to obtain public input. The proceeds of this excise tax must be expended in conformance with this plan.

(4) As used in this section, "conservation area" has the meaning given under RCW 36.32.570. [1990 1st ex.s. c 5 § 3.]

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

82.46.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW. Any ordinance imposing a tax under chapter 82.46 RCW which is in effect on July 1, 1993, shall apply to all sales taxable under chapter 82.45 RCW on July 1, 1993, at the rate specified in the ordinance, until such time as the ordinance is otherwise amended or repealed. [1993 sp.s. c 25 § 508.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Chapter 82.47

BORDER AREA MOTOR VEHICLE FUEL AND SPECIAL FUEL TAX

Sections

82.47.010	Definitions.
82.47.020	Tax authority.
82.47.030	Proceeds.

82.47.010 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Motor vehicle fuel" has the meaning given in RCW 82.36.010(2).

(2) "Special fuel" has the meaning given in RCW 82.38.020(5).

(3) "Motor vehicle" has the meaning given in RCW 82.36.010(1). [1991 c 173 § 2.]

Effective date—1991 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 173 § 7.]

82.47.020 Tax authority. The legislative authority of a border area jurisdiction may, by resolution for the purposes authorized in this chapter and by approval of a majority of the registered voters of the jurisdiction voting on the proposition at a general or special election, fix and impose an excise tax on the retail sale of motor vehicle fuel and special fuel within the jurisdiction. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The rate of such tax shall be in increments of one-tenth of a cent per gallon and shall not exceed one cent per gallon.

The tax imposed in this section shall be collected and paid to the jurisdiction but once in respect to any motor vehicle fuel or special fuel. This tax shall be in addition to any other tax authorized or imposed by law.

For purposes of this chapter, the term "border area jurisdictions" means all cities and towns within ten miles of an international border crossing and any transportation benefit district established under RCW 36.73.020 which has within its boundaries an international border crossing. [1991 c 173 § 1.]

Effective date—1991 c 173: See note following RCW 82.47.010.

82.47.030 Proceeds. The entire proceeds of the tax imposed under this chapter, less refunds authorized by the resolution imposing such tax and less amounts deducted by the border area jurisdiction for administration and collection expenses, shall be used solely for the purposes of border area jurisdiction street maintenance and construction. [1991 c 173 § 3.]

Effective date—1991 c 173: See note following RCW 82.47.010.

**Chapter 82.48
AIRCRAFT EXCISE TAX**

Sections

- 82.48.010 Definitions.
- 82.48.020 Excise tax imposed on aircraft—Out-of-state registration to avoid tax, liability—Penalties.
- 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 and interest.
- 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, limited liability company, 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. [1995 c 318 § 4; 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.]

Effective date—1995 c 318: See note following RCW 82.04.030.

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—Out-of-state registration to avoid tax, liability—Penalties. (1) 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 own-

ership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.

(2) Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the Washington aircraft excise tax are liable for such unpaid excise tax. A violation of this subsection is a gross misdemeanor. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) Except as provided under subsections (1) and (2) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW. [1993 c 238 § 5; 1992 c 154 § 1; 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.]

Effective date—1992 c 154: "This act shall take effect July 1, 1992." [1992 c 154 § 7.]

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 transportation fund for administrative expenses. [1995 c 170 § 2; 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 and interest. In case a claim is made by any person that the person has paid an erroneously excessive amount of excise tax under this chapter, the person may apply to the department of transportation for a refund of the claimed excessive amount together with interest at the rate specified in RCW 82.32.060. The department of transportation shall review such application, and if it determines that an excess amount of tax has actually been paid by the taxpayer, such excess amount and interest at the rate specified in RCW 82.32.060 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. [1992 c 154 § 2; 1989 c 378 § 25; 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.]

Effective date—1992 c 154: See note following RCW 82.48.020.

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—Out-of-state registration to avoid tax, liability—Penalties.
- 82.49.020 Exemptions.
- 82.49.030 Payment of tax—Deposit in general fund—Use for purposes specified in RCW 88.12.450.
- 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 or status as taxable—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal.
- 82.49.065 Refunds, collections of erroneous amounts—Claims—Penalty for false statement.
- 82.49.900 Construction—Severability—Effective dates—1983 c 7.

Boat trailer fee: RCW 46.16.670.

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—Out-of-state registration to avoid tax, liability—Penalties. (1) 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. Violation of this subsection is a misdemeanor.

(2) Persons who are required under chapter 88.02 RCW to register a vessel in this state and who register the vessel in another state or foreign country and avoid the Washington watercraft excise tax are guilty of a gross misdemeanor and are liable for such unpaid excise tax. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) 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. [1993 c 238 § 6; 1992 c 154 § 3; 1983 2nd ex.s. c 3 § 42; 1983 c 7 § 9.]

Effective date—1992 c 154: See note following RCW 82.48.020.

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—Use for purposes specified in *RCW 88.12.450. (1) 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.

(2) The excise tax collected under this chapter shall be deposited in the general fund.

(3) For the 1993-95 fiscal biennium, the watercraft excise tax revenues exceeding five million dollars in each fiscal year, but not exceeding six million dollars, may, subject to appropriation by the legislature, be used for the purposes specified in *RCW 88.12.450. [1991 sp.s. c 16 § 925; 1989 c 393 § 10; 1983 c 7 § 10.]

***Reviser's note:** RCW 88.12.450 was recodified as RCW 88.12.375 pursuant to 1993 c 244 § 45.

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

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 or status as taxable—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 or disputing whether the vessel is taxable, 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. [1993 c 33 § 1; 1983 c 7 § 13.]

Effective date—1993 c 33: "This act shall take effect January 1, 1994." [1993 c 33 § 8.]

82.49.065 Refunds, collections of erroneous amounts—Claims—Penalty for false statement. Whenever any person has paid a vessel license fee, and with the fee has paid an excise tax imposed under 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 the payor shall also be entitled to a refund of the entire excise tax collected under this chapter together with interest at the rate specified in RCW 82.32.060. If the director determines that any person is entitled to a refund of only a part of the license fee 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 together with interest at the rate specified in RCW 82.32.060. 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.

If no claim is to be made for the refund of the license fee, or any part of the fee, but claim is made by any person that he or she 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 the person is entitled to a refund in that amount together with interest at the rate specified in RCW 82.32.060.

If due to error a person has been required to pay an excise tax pursuant to this chapter and a license fee under chapter 88.02 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

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 provided for in this section from the general fund and shall mail or deliver the same to the person entitled to the refund.

[Title 82 RCW—page 194]

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [1992 c 154 § 4; 1989 c 68 § 3.]

Effective date—1992 c 154: See note following RCW 82.48.020.

82.49.900 Construction—Severability—Effective dates—1983 c 7. See notes following RCW 82.08.020.

Chapter 82.50

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, collection of erroneous amounts—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—Out-of-state registration to avoid tax, liability—Penalties.
82.50.405	Additional annual clean air excise tax.
82.50.410	Rate—Minimum payable—Dealer tax.
82.50.425	Valuation of travel trailers and campers.
82.50.435	Appeal of valuation.
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—Loss of identity, subject to property tax.
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.
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Boat trailer fee: RCW 46.16.670.

"Registration year," defined—"Last day of the month," defined: RCW 46.16.006.

82.50.010 Definitions. (1) "Mobile home" means a mobile home as defined by RCW 46.04.302.

(2) "Park trailer" means a park trailer as defined by RCW 46.04.622.

(3) "Travel trailer" means a travel trailer as defined by RCW 46.04.623.

(4) "Modular home" means a modular home as defined by RCW 46.04.303.

(5) "Camper" means a camper as defined by RCW 46.04.085.

(6) "Motor home" means a motor home as defined by RCW 46.04.305.

(7) "Director" means the director of licensing of the state. [1989 c 337 § 20; 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, collection of erroneous amounts—Penalty for false statement. In case a claim is made by any person that the person has erroneously paid the tax or a part thereof or any charge hereunder, the person 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 of licensing. The department of licensing 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 together with interest at the rate specified in RCW 82.32.060, and the treasurer shall make such approved refund together with interest at the rate specified in RCW 82.32.060 herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

If due to error a person has been required to pay an excise tax under this chapter and a vehicle license fee under Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

Any person making any false statement in the claim herein mentioned, under which the person obtains any amount of refund to which the person is not entitled under the provisions of this section, shall be guilty of a gross misdemeanor. [1992 c 154 § 6. Prior: 1989 c 378 § 26; 1989 c 68 § 4; 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.]

Effective date—1992 c 154: See note following RCW 82.48.020.

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 chapter 149, Laws of 1967 ex. sess. [1967 ex.s. c 149 § 59.]

TAXATION OF TRAVEL TRAILERS AND CAMPERS

82.50.400 Tax imposed—Collection—Transfer of ownership—Out-of-state registration to avoid tax, liability—Penalties. (1) 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, 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. Violation of this subsection is a misdemeanor.

(2) Persons who are required to license travel trailers or campers under chapter 46.16 RCW and who license travel trailers or campers in another state or foreign country to avoid the Washington travel trailer or camper tax are guilty of a gross misdemeanor and are liable for such unpaid excise tax. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW. [1993 c 238 § 7; 1992 c 154 § 5; 1990 c 42 § 320; 1979 c 123 § 1; 1975 1st ex.s. c 118 § 15; 1971 ex.s. c 299 § 55.]

Effective date—1992 c 154: See note following RCW 82.48.020.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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.

82.50.405 Additional annual clean air excise tax. Effective with October 1992 motor vehicle registration expirations, an additional annual clean air excise tax of two dollars and twenty-five cents is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars. 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, 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. Receipts from the tax levied in this section shall be deposited in the air pollution control account created by RCW 70.94.015. [1991 c 199 § 226.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

82.50.410 Rate—Minimum payable—Dealer tax.

The rate and measure of tax imposed by RCW 82.50.400 for each registration year shall be one percent, and a surcharge of one-tenth of one percent, of the 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. [1991 c 199 § 225; 1990 c 42 § 321; 1979 c 123 § 2; 1975 1st ex.s. c 118 § 16; 1972 ex.s. c 144 § 2; 1971 ex.s. c 299 § 56.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

82.50.425 Valuation of travel trailers and campers.

For the purpose of determining the tax under this chapter, the value of a travel trailer or camper is the manufacturer's base suggested retail price of the travel trailer or camper when first offered for sale as new, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this section based on the year of service.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial

registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(1) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the travel trailer or camper. The department may use an appraisal by the county assessor. In valuing a travel trailer or camper for which the current value or selling price is not indicative of the value of similar travel trailers or campers of the same year and model, the department shall establish a value that more closely represents the average value of similar travel trailers or campers of the same year and model. If the travel trailer or camper is home-built, the value shall not be less than the cost of construction.

(2) The value determined in subsection (1) of this section shall be divided by the applicable percentage listed in this section to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the travel trailer or camper for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	84
4	79
5	73
6	65
7	60
8	55
9	50
10	45
11	41
12	37
13	33
14	28
15	24
16 or older	20

[1990 c 42 § 323.]

Transitional valuation method and tax limitation—1990 c 42: See note following RCW 82.44.041.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.50.435 Appeal of valuation. If the department determines a value for a travel trailer or camper under RCW 82.50.425 equivalent to a manufacturer's base suggested retail price, any person who pays the tax for that travel trailer or camper may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.50.170. [1990 c 42 § 324.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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 imposed by RCW 82.50.400. 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: (1) For the one percent tax imposed under RCW 82.50.410, 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; and (2) for the one-tenth of one percent surcharge imposed under RCW 82.50.410, one hundred percent to the transportation fund created in RCW 82.44.180. [1991 c 199 § 227; 1990 c 42 § 322; 1975-'76 2nd ex.s. c 75 § 1; 1971 ex.s. c 299 § 66.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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—Loss of identity, subject to property tax. 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 or her business and no travel trailer or camper as defined in RCW 82.50.010 shall be listed and assessed for ad valorem taxation. However, if a park trailer as defined in RCW 46.04.622 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 park trailer and placed on a permanent foundation of either posts or blocks with fixed pipe connections with sewer, water, or other utilities it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with the provisions of Title 84 RCW, including the provisions with respect to omitted property, except that a park trailer located on land leased by the owner of the park trailer shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040. [1993 c 32 § 1; 1981 c 304 § 32; 1971 ex.s. c 299 § 68.]

Applicability—1993 c 32 § 1: "Section 1 of this act shall be effective for taxes levied for collection in 1993 and thereafter." [1993 c 32 § 2.]

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

Real property defined: RCW 84.04.090.

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.]

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.
82.60.045	Eligible projects—Additional requirements.
82.60.047	Governor designation of county as eligible area—Natural disaster, business closure, military base closure, mass layoff.
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 and investment projects—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.
82.60.110	Competing projects—Study impact.
82.60.900	Effective date, applicability—1985 c 232.
82.60.901	Effective date—1994 sp.s. c 1.

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) 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; (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (c) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; (d) a designated community empowerment zone approved under RCW 43.63A.700 or a county containing such a community empowerment zone; (e) a town with a population of less than twelve hundred persons in those counties that are not covered under (a) of this subsection that are timber impact areas as defined in RCW 43.31.601; (f) a county designated by the governor as an eligible area under RCW 82.60.047; or (g) a county that is contiguous to a county that qualifies as an eligible area under (a) or (f) of this subsection.

(4)(a) "Eligible investment project" means:

(i) An investment project in an eligible area as defined in subsection (3)(a), (b), (c), (e), or (f) of this section; or

(ii) That portion of an investment project in an eligible area as defined in subsection (3)(d) or (g) of this section which 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 in an application approved before July 1, 1994, and for each seven hundred fifty thousand dollars of investment on which a deferral is requested in an application approved after June 30, 1994.

(b) The lessor/owner of a qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(c) For purposes of (a)(ii) of this subsection:

(i) The department shall consider the entire investment project, including any investment in machinery and equip-

ment that otherwise qualifies for exemption under RCW 82.08.02565 or 82.12.02565, for purposes of determining the portion of the investment project that qualifies for deferral as an eligible investment project; and

(ii) The number of new full-time qualified employment positions created by an investment project shall be deemed to be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project.

(d) "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), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings or 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 construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity 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. [1996 c 290 § 4; 1995 1st sp.s. c 3 § 5. Prior: 1994 sp.s. c 7 § 704; 1994 sp.s. c 1 § 1; 1993 sp.s. c 25 § 403; 1988 c 42 § 16; 1986 c 116 § 12; 1985 c 232 § 2.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

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

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 42: See note following RCW 4.24.480.

Severability—1986 c 116: See RCW 82.62.900.

82.60.030 Application for deferral—Contents. (*Expires July 1, 2004.*) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. 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. [1994 sp.s. c 1 § 2; 1985 c 232 § 3.]

Expiration of RCW 82.60.030 and 82.60.040: See RCW 82.60.050.

82.60.040 Issuance of tax deferral certificate. (*Expires July 1, 2004.*) (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 that:

(a) Is located in an eligible area as defined in *RCW 82.60.020(3)(a), (b), (d), or (e);

(b) Is located in an eligible area as defined in *RCW 82.60.020(3)(f) if seventy-five percent of the new qualified employment positions are to be filled by residents of a contiguous county that is an eligible area as defined in *RCW 82.60.020(3)(a) or (e); or

(c) Is located in an eligible area as defined in *RCW 82.60.020(3)(c) if seventy-five percent of the new qualified employment positions are to be filled by residents of a designated community empowerment zone approved under RCW 43.63A.700 located within the county in which the eligible investment project is located.

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium. [1995 1st sp.s. c 3 § 6; 1994 sp.s. c 1 § 3; 1986 c 116 § 13; 1985 c 232 § 4.]

***Reviser's note:** RCW 82.60.020 was amended by 1996 c 290 § 4, changing subsection (3)(b), (c), (d), (e), and (f) to subsection (3)(c), (d), (e), (f), and (g), respectively.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Expiration of RCW 82.60.030 and 82.60.040: See RCW 82.60.050.

Severability—1986 c 116: See RCW 82.62.900.

82.60.045 Eligible projects—Additional requirements. In addition to the other requirements of this chapter, a recipient of a tax deferral under RCW 82.60.040(1) (b) or (c) shall meet the following requirements:

(1) The recipient shall fill at least seventy-five percent of the new qualified employment positions with residents of the contiguous county or community empowerment zone by December 31 of the calendar year during which the department certifies that the investment project is operationally completed, and shall maintain the required percentage during each of the seven succeeding calendar years.

(2) If the deferral is for expansion or diversification of an existing facility, the recipient shall ensure that the percentage of qualified employment positions filled by residents of the contiguous county or community empowerment zone for periods prior to the application be maintained for seven calendar years after the year during which the department certifies that the investment project is operationally completed. [1995 1st sp.s. c 3 § 7; 1994 sp.s. c 1 § 4.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.60.047 Governor designation of county as eligible area—Natural disaster, business closure, military base closure, mass layoff. The governor is authorized to designate a county as an eligible area for purposes of this chapter if, as a result of a natural disaster or business or military base closure or mass layoff, the twelve-month average unemployment rate using the projected level of new unemployment in the county over the ensuing twelve months added to the base unemployment level in the county for the preceding twelve months will exceed the previous twelve-month average state unemployment rate by forty percent. The designation shall be effective for a period of twelve months. [1994 sp.s. c 1 § 9.]

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, 2004. [1994 sp.s. c 1 § 7; 1993 sp.s. c 25 § 404; 1988 c 41 § 5; 1985 c 232 § 10.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 41: See RCW 82.61.901.

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 and investment projects—Repayment forgiven. Except as provided in RCW 82.60.070:

(1) 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, and prior to July 1, 1994, need not be repaid.

(2) Taxes deferred under this chapter on an investment project for which a deferral has been granted under this chapter after June 30, 1994, need not be repaid.

(3) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995. [1995 1st sp.s. c 3 § 8; 1994 sp.s. c 1 § 6; 1986 c 116 § 14.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Severability—1986 c 116: See RCW 82.62.900.

82.60.070 Reports by recipients—Assessment of taxes, interest. (1) Each recipient of a deferral granted under this chapter prior to July 1, 1994, shall submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. Each recipient of a deferral granted under this chapter after June 30, 1994, shall submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. 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 for which a deferral has been granted under this chapter prior to July 1, 1994, has been operationally com-

plete 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.

(4) If, on the basis of a report under this section or other information, the department finds that an investment project for which a deferral has been granted under this chapter after June 30, 1994, has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes not eligible for deferral shall be immediately due. The department shall assess interest at the rate provided for delinquent excise taxes, but not penalties, retroactively to the date of deferral.

(5) If, on the basis of a report under this section or other information, the department finds that an investment project qualifying for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under subsection (1) of this section, twelve and one-half percent of the amount of deferred taxes shall be immediately due. The department shall assess interest at the rate provided for delinquent excise taxes, but not penalties, retroactively to the date of deferral.

(6) Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995.

(7) Notwithstanding any other subsection of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [1995 1st sp.s. c 3 § 9; 1994 sp.s. c 1 § 5; 1985 c 232 § 6.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

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.]

82.60.110 Competing projects—Study impact. If the department determines that an investment project for which an exemption is granted under this chapter competes with an investment project for which a deferral is granted under this chapter, the department shall study the impacts on the project for which a deferral is granted and report to the fiscal committees of the legislature concerning revenue matters. [1994 sp.s. c 1 § 8.]

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.

82.60.901 Effective date—1994 sp.s. c 1. This act shall take effect July 1, 1994. [1994 sp.s. c 1 § 10.]

Chapter 82.61

TAX DEFERRALS FOR MANUFACTURING, RESEARCH, AND DEVELOPMENT PROJECTS

Sections

82.61.010	Definitions.
82.61.030	Tax deferral—Eligibility.
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.
82.61.901	Severability—1988 c 41.

Tax credits for eligible business projects: Chapter 82.62 RCW.

Tax credits for research: RCW 82.04.4452.

Tax deferrals for investment projects in distressed areas: Chapter 82.60 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, 1995; or

(b) Acquisition prior to December 31, 1995, 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. 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

[Title 82 RCW—page 208]

(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

(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.

(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. [1995 1st sp.s. c 3 § 10; 1994 c 125 § 1; 1988 c 41 § 1; 1987 c 497 § 1; 1986 c 116 § 9; 1985 ex.s. c 2 § 1.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Severability—1986 c 116: See RCW 82.62.900.

82.61.030 Tax deferral—Eligibility. 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.]

82.61.050 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 community, 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 1999. [1995 c 399 § 215; 1993 sp.s. c 25 § 409; 1988 c 41 § 3; 1986 c 116 § 11; 1985 ex.s. c 2 § 6.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

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.]

82.61.901 Severability—1988 c 41. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 41 § 6.]

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.
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) 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; (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (c) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; (d) a designated community empowerment zone approved under RCW 43.63A.700; or (e) subcounty areas in those counties that are not covered under (a) of this subsection that are timber impact areas as defined in RCW 43.31.601.

(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 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. [1996 c 290 § 5; 1994 sp.s. c 7 § 705; 1993 sp.s. c 25 § 410; 1988 c 42 § 17; 1986 c 116 § 15.]

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

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 42: See note following RCW 4.24.480.

82.62.020 Application for tax credits—Contents. (*Expires July 1, 1998.*) 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.]

Expiration date—1986 c 116: See RCW 82.62.040.

82.62.030 Allowance of tax credits—Limitations. (1) A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. For an application approved before January 1, 1996, the credit shall equal one thousand dollars for each qualified employment position directly created in an eligible business project. For an application approved on or after January 1, 1996, the credit shall equal two 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. [1996 c 1 § 3; 1986 c 116 § 17.]

Effective date—1996 c 1: See note following RCW 82.04.255.

82.62.040 Expiration of RCW 82.62.020. RCW 82.62.020 shall expire July 1, 1998. [1993 sp.s. c 25 § 411; 1988 c 41 § 4; 1986 c 116 § 22.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 41: See RCW 82.61.901.

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.]

Chapter 82.63

TAX DEFERRALS FOR HIGH TECHNOLOGY BUSINESSES

Sections

82.63.005	Findings—Intent to create a contract.
82.63.010	Definitions.
82.63.020	Application—Assessment reports.
82.63.030	Sales and use tax deferral certificate—Eligible investment projects and pilot scale manufacturing—Expiration of section.
82.63.045	Repayment not required—Repayment schedule for unqualified investment project—Exceptions.
82.63.060	Administration.
82.63.070	Public disclosure.
82.63.080	Report to governor and legislature.
82.63.900	Effective date—1994 sp.s. c 5.

82.63.005 Findings—Intent to create a contract. The legislature finds that high-wage, high-skilled jobs are vital to the economic health of the state's citizens, and that targeted tax incentives will encourage the formation of high-wage, high-skilled jobs. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

The legislature also finds that high-technology businesses are a vital and growing source of high-wage, high-skilled jobs in this state, and that the high-technology sector is a key component of the state's effort to encourage economic diversification. However, the legislature finds that many high-technology businesses incur significant costs associated with research and development and pilot scale manufacturing many years before a marketable product can be produced, and that current state tax policy discourages the growth of these companies by taxing them long before they become profitable.

The legislature further finds that stimulating growth of high-technology businesses early in their development cycle, when they are turning ideas into marketable products, will build upon the state's established high-technology base, creating additional research and development jobs and subsequent manufacturing facilities.

For these reasons, the legislature hereby establishes a program of business and occupation tax credits for qualified research and development expenditures. The legislature also hereby establishes a tax deferral program for high-technology research and development and pilot scale manufacturing fa-

ilities. The legislature declares that these limited programs serve the vital public purpose of creating employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter. [1994 sp.s. c 5 § 1.]

82.63.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(2) "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(3) "Applicant" means a person applying for a tax deferral under this chapter.

(4) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(5) "Department" means the department of revenue.

(6) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(7) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility. The lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(8) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(9) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project.

(10) "Person" has the meaning given in RCW 82.04.030.

(11) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" 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.

(12) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. If a building is used partly for pilot scale manufacturing or qualified 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.

(13) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this chapter, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment 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.

(14) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(15) "Recipient" means a person receiving a tax deferral under this chapter.

(16) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer

software developed for internal use, and research in areas such as improved style, taste, and seasonal design. [1995 1st sp.s. c 3 § 12; 1994 sp.s. c 5 § 3.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.63.020 Application—Assessment reports.

Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for 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.

Applicants for deferral of taxes under this chapter shall agree to supply the department with nonproprietary information necessary to measure the results of the tax deferral program for high-technology research and development and pilot scale manufacturing facilities. The department shall use the information to perform three assessments on the tax deferral program authorized under this chapter. The assessments will take place in 1997, 2000, and 2003. The department shall prepare reports on each assessment and deliver their reports by September 1, 1997, September 1, 2000, and September 1, 2003. The assessments shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [1994 sp.s. c 5 § 4.]

82.63.030 Sales and use tax deferral certificate—Eligible investment projects and pilot scale manufacturing—Expiration of section. (1) Except as provided in subsection (2) of this section, 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.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 or 82.61 RCW or this chapter, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) This section shall expire July 1, 2004. [1994 sp.s. c 5 § 5.]

82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions.

(1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2) If, on the basis of a report under RCW 82.63.020 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

The department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral.

(3) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [1995 1st sp.s. c 3 § 13.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.63.060 Administration. Chapter 82.32 RCW applies to the administration of this chapter. [1994 sp.s. c 5 § 8.]

82.63.070 Public disclosure. Applications and other information received by the department under this chapter are not confidential and are subject to disclosure. [1994 sp.s. c 5 § 9.]

82.63.080 Report to governor and legislature. The department shall perform an assessment of the results of the tax credit and tax deferral programs authorized under chapters 82.60, 82.61, and 82.62 RCW and deliver a report on the assessment to the governor and the legislature by September 1, 1996. The assessments shall measure the effect of the programs on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [1994 sp.s. c 5 § 10.]

82.63.900 Effective date—1994 sp.s. c 5. This act shall take effect January 1, 1995. [1994 sp.s. c 5 § 12.]

Chapter 82.64
CARBONATED BEVERAGE TAX

Sections

82.64.010	Definitions.
82.64.020	Tax imposed—Wholesale, retail—Revenue deposited in violence reduction and drug enforcement account.
82.64.030	Exemptions.
82.64.040	Credit against tax.
82.64.050	Wholesaler to collect tax from buyer.
82.64.901	Effective dates—1989 c 271.
82.64.902	Severability—1989 c 271.

82.64.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Previously taxed syrup" means syrup in respect to which a tax has been paid under this chapter.

(3) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [1994 sp.s. c 7 § 905 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 1; 1989 c 271 § 505.]

Construction—1994 sp.s. c 7 §§ 905-908: "Sections 905 through 908, chapter 7, Laws of 1994 sp. sess. shall not be construed as affecting any existing right acquired or liability or obligation incurred, nor as affecting any proceeding instituted under those sections, before July 1, 1995." [1994 sp.s. c 7 § 912 (Referendum Bill No. 43, approved November 8, 1994).]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Policy—1991 c 80: "The taxes imposed in this act are intended to raise revenue for the enforcement of the drug laws of the state. It is the policy of the state to actively combat the problem of drug abuse by aggressive enforcement of the state's drug laws and by extensive promotion of public education programs designed to increase public and consumer awareness of the state's drug problem and its enforcement measures." [1991 c 80 § 6.]

Savings—1991 c 80: "The amendatory sections of this act shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections as they existed before this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1991 c 80 § 8.]

Effective date—1991 c 80: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991." [1991 c 80 § 9.]

82.64.020 Tax imposed—Wholesale, retail—Revenue deposited in violence reduction and drug enforcement account. (1) A tax is imposed on each sale at wholesale of syrup in this state. The rate of the tax shall be equal to one dollar per gallon. Fractional amounts shall be taxed proportionally.

(2) A tax is imposed on each sale at retail of syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

(3) Moneys collected under this chapter shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

(4) Chapter 82.32 RCW applies to the taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the taxes imposed in this chapter. [1994 sp.s. c 7 § 906 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 2; 1989 c 271 § 506.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Construction—1994 sp.s. c 7 §§ 905-908: See note following RCW 82.64.010.

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.030 Exemptions. The following are exempt from the taxes imposed in this chapter:

(1) Any successive sale of a previously taxed syrup.

(2) Any syrup that is transferred to a point outside the state for use outside the state. The department shall provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(3) Any sale at wholesale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked syrup within a specified geographic territory.

(4) Any sale of syrup in respect to which a tax on the privilege of possession was paid under this chapter before June 1, 1991. [1994 sp.s. c 7 § 907 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 3; 1989 c 271 § 507.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Construction—1994 sp.s. c 7 §§ 905-908: See note following RCW 82.64.010.

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.040 Credit against tax. (1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any syrup tax paid to another state with respect to the same syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that syrup.

(2) For the purpose of this section:

(a) "Syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1994 sp.s. c 7 § 908 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 7; 1989 c 271 § 508.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Construction—1994 sp.s. c 7 §§ 905-908: See note following RCW 82.64.010.

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.050 Wholesaler to collect tax from buyer. (1)

The tax imposed in RCW 82.64.020(1) shall be paid by the buyer to the wholesaler and each wholesaler shall collect from the buyer the full amount of the tax payable in respect to each taxable sale, unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States. Regardless of the obligation to collect the tax from the buyer, the wholesaler is liable to the state for the amount of the tax. The tax imposed in RCW 82.64.020(2) shall be paid by the retailer. The buyer is not obligated to pay or report to the department the taxes imposed in RCW 82.64.020.

(2) The tax required to be collected by the wholesaler shall be stated separately from the selling price in any sales invoice or other instrument of sale.

(3) Any wholesaler who fails or refuses to collect tax under this section, with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, is guilty of a misdemeanor.

(4) The amount of tax required to be collected under this section shall constitute a debt from the buyer to the wholesaler until paid by the buyer to the wholesaler. [1991 c 80 § 4.]

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.901 Effective dates—1989 c 271. See note following RCW 66.28.200.

82.64.902 Severability—1989 c 271. See note following RCW 9.94A.310.

Chapter 82.65A

INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Sections

82.65A.010 Expiration date defined.

82.65A.020 Definitions.

82.65A.030 Tax imposed.

82.65A.040 Administration.

82.65A.900 Expiration date—Savings—Application—1992 c 80.

82.65A.901 Effective date—1992 c 80.

82.65A.010 Expiration date defined. As used in this chapter, "expiration date" means the earliest of:

(1) The effective date that federal medicaid matching funds for the purposes specified in *section 7 of this act become unavailable or are substantially reduced, as such date is certified by the secretary of social and health services;

(2) The effective date that federal medicaid matching funds for the purposes specified in *section 7 of this act

become unavailable or are substantially reduced, as determined by a permanent injunction, court order, or final court decision; or

(3) The effective date of a permanent injunction, court order, or final court decision that prohibits in whole or in part the collection of taxes under RCW 82.65A.030. [1992 c 80 § 1.]

***Reviser's note:** "Section 7 of this act" was originally an appropriation section, however a senate amendment removed the appropriation section, and the corresponding internal and substantive references were not corrected.

82.65A.020 Definitions. (*Contingent expiration date.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Gross income" means all income from whatever source derived, including but not limited to gross income of the business as defined in RCW 82.04.080 and moneys received from state appropriations.

(2) "Intermediate care facility for the mentally retarded" means an intermediate care facility certified by the department of social and health services and the federal department of health and human services to provide residential care under 42 U.S.C. Sec. 1396d(d). [1992 c 80 § 2.]

82.65A.030 Tax imposed. (*Contingent expiration date.*) In addition to any other tax, a tax is imposed on every intermediate care facility for the mentally retarded for the act or privilege of engaging in business within this state. The tax is equal to the gross income attributable to services for the mentally retarded, multiplied by the rate of fifteen percent. [1992 c 80 § 3.]

82.65A.030 Tax imposed. (*Contingent effective date and contingent expiration date.*) In addition to any other tax, a tax is imposed on every intermediate care facility for the mentally retarded for the act or privilege of engaging in business within this state. The tax is equal to the gross income attributable to services for the mentally retarded, multiplied by the rate of six percent. [1993 c 276 § 1; 1992 c 80 § 3.]

Contingent effective date—1993 c 276: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on such date as shall be certified by the secretary of social and health services by which states must modify health care related taxes to prevent the loss of federal medicaid participation in the cost of the tax." [1993 c 276 § 2.]

82.65A.040 Administration. (*Contingent expiration date.*) 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, except the department may not permit returns for taxes under this chapter to cover periods longer than one month. The appropriations in *section 7 of this act shall not be construed as modifying in any manner the obligation of the taxpayer to pay taxes on an accrual basis as ordinarily required under chapter 82.04 RCW. [1992 c 80 § 4.]

***Reviser's note:** See note following RCW 82.65A.010.

82.65A.900 Expiration date—Savings—Application—1992 c 80. (1) RCW 82.65A.020 through 82.65A.040 shall expire on the expiration date determined under RCW 82.65A.010.

(2) The expiration of RCW 82.65A.020 through 82.65A.040 shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

(3) Taxes that have been paid under RCW 82.65A.020 through 82.65A.040, but are properly attributable to taxable events occurring after the expiration of those sections, shall be credited or refunded as provided in RCW 82.32.060. [1992 c 80 § 6.]

82.65A.901 Effective date—1992 c 80. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992. [1992 c 80 § 7.]

Chapter 82.66

TAX DEFERRALS FOR NEW THOROUGHBRED RACE TRACKS

Sections

- 82.66.010 Definitions.
- 82.66.020 Application for deferral—Contents—Ruling.
- 82.66.030 Issuance of tax deferral certificate—Rules for use—Expiration of section.
- 82.66.040 Repayment schedule—Interest, penalties.
- 82.66.050 Applications not confidential.
- 82.66.060 Administration.
- 82.66.900 Severability—1995 c 352.
- 82.66.901 Effective date—1995 c 352.

82.66.010 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) "Investment project" means construction of buildings, site preparation, and the acquisition of related machinery and equipment when the buildings, machinery, and equipment are to be used in the operation of a new thoroughbred race track.

(5) "New thoroughbred race track" means a site for thoroughbred horse racing located west of the Cascade mountains on which construction is commenced prior to July 1, 1998.

(6) "Buildings" means only those new structures such as ticket offices, concession areas, grandstands, stables, and other structures that are an essential or an integral part of a thoroughbred race track. If a building is used partly for use as an essential or integral part of a thoroughbred race track 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.

(7) "Machinery and equipment" means all fixtures, equipment, and support facilities that are an integral and necessary part of a thoroughbred race track.

(8) "Recipient" means a person receiving a tax deferral under this chapter.

(9) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(10) "Operationally complete" means constructed or improved to the point of being functionally useable for thoroughbred horse racing.

(11) "Initiation of construction" means that date upon which on-site construction commences. [1995 c 352 § 1.]

82.66.020 Application for deferral—Contents—Ruling. Application for deferral of taxes under this chapter 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. [1995 c 352 § 2.]

82.66.030 Issuance of tax deferral certificate—Rules for use—Expiration of section. (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 investment project. The use of the certificate shall be governed by rules established by the department.

(2) This section shall expire July 1, 1998. [1995 c 352 § 3.]

82.66.040 Repayment schedule—Interest, penalties. (1) The recipient shall begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the investment project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	10%
3	10%
4	10%
5	10%
6	10%
7	10%
8	10%
9	10%
10	10%

(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. [1995 c 352 § 4.]

82.66.050 Applications not confidential. Applications and any other information received by the department under this chapter is not confidential and is subject to disclosure. [1995 c 352 § 6.]

82.66.060 Administration. Chapter 82.32 RCW applies to the administration of this chapter. [1995 c 352 § 5.]

82.66.900 Severability—1995 c 352. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 352 § 7.]

82.66.901 Effective date—1995 c 352. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]. [1995 c 352 § 9.]

Chapter 82.80

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.010	Motor vehicle and special fuel tax.
82.80.020	Vehicle license fee.
82.80.030	Commercial parking tax.
82.80.040	Street utility—Establishment.
82.80.050	Street utility—Charges, credits.
82.80.060	Use of other proceeds by utility.
82.80.070	Use of revenues.
82.80.080	Distribution of taxes.
82.80.090	Referendum.
82.80.900	Purpose—Headings—Severability—Effective dates— Application—Implementation—1990 c 42.

82.80.010 Motor vehicle and special fuel tax. (1) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the state-wide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010(2) and on each gallon of special fuel as defined in RCW 82.38.020(5) sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax shall not be levied less than one month from the date the election

results are certified by the county election officer. The commencement date for the levy of any tax under this section shall be the first day of January, April, July, or October.

(2) Every person subject to the tax shall pay, in addition to any other taxes provided by law, an additional excise tax to the director of licensing at the rate levied by a county exercising its authority under this section.

(3) The state treasurer shall distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090 (1) and (2) and under the conditions and limitations provided in RCW 82.80.080.

(4) The proceeds of the additional excise taxes levied under this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(5) The department of licensing shall administer and collect the county fuel taxes. The department shall deduct a percentage amount, as provided by contract, for administrative, collection, refund, and audit expenses incurred. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080. [1991 c 339 § 12; 1990 c 42 § 201.]

82.80.020 Vehicle license fee. (1) The legislative authority of a county may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.060 and is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department 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 it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county may develop and initiate an exemption process of the fifteen dollar fee for the registered owners of vehicles residing within the boundaries of the county (a) who are sixty-one years old or older at the time payment of the fee is due and whose household income for the previous calendar year is less than an amount prescribed by the county legislative authority, or (b) who has a physical disability.

(6) The legislative authority of a county shall develop and initiate an exemption process of the fifteen-dollar fee for vehicles registered within the boundaries of the county that are licensed under RCW 46.16.374. [1996 c 139 § 4; 1993 c 60 § 1; 1991 c 318 § 13; 1990 c 42 § 206.]

82.80.030 Commercial parking tax. (1) Subject to the conditions of this section, the legislative authority of a county or city may fix and impose a parking tax on all

persons engaged in a commercial parking business within its respective jurisdiction. The jurisdiction of a county, for purposes of this section, includes only the unincorporated area of the county. The jurisdiction of a city includes only the area within its incorporated boundaries.

(2) In lieu of the tax in subsection (1) of this section, a city or a county in its unincorporated area may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business.

The city or county may provide that:

(a) The tax is paid by the operator or owner of the motor vehicle;

(b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;

(c) The tax is collected by the operator of the facility and remitted to the city or county;

(d) The tax is a fee per vehicle or is measured by the parking charge;

(e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and

(f) Tax exempt carpools, vehicles with handicapped decals, or government vehicles are exempt from the tax.

(3) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

(4) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business.

(5) The county or city levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis. Each local government may develop by ordinance or resolution rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement.

(6) The proceeds of the commercial parking tax fixed and imposed under subsection (1) or (2) of this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070. [1990 c 42 § 208.]

82.80.040 Street utility—Establishment. A city or town may elect by action of its legislative authority to own, construct, maintain, operate, and preserve all or any described portion of its streets as a separate enterprise and facility, known as a street utility, and from time to time add other existing or new streets to that street utility, with full power to own, construct, maintain, operate, and preserve such streets. The legislative authority of the city or town may include as a part of the street utility, street lighting, traffic control devices, sidewalks, curbs, gutters, parking facilities, and drainage facilities. The legislative authority of the city or town is the governing body of the street utility. [1991 c 141 § 1. Prior: 1990 c 42 § 209.]

82.80.050 Street utility—Charges, credits. A city or town electing to own, construct, maintain, operate, and preserve its streets as a separate street utility may levy periodic charges for the use or availability of the streets in a total annual amount of up to fifty percent of the actual costs for maintenance, operation, and preservation of facilities under the jurisdiction of the street utility. The rates charged for the use must be uniform for the same class of service and all business and residential properties must be subject to the utility charge. Charges imposed on businesses shall be measured solely by the number of employees and shall not exceed the equivalent of two dollars per full-time equivalent employee per month. Charges imposed against owners or occupants of residential property shall not exceed two dollars per month per housing unit as defined in RCW 35.95.040. Charges authorized in this section shall not be imposed against owners of property: (1) Exempt under RCW 84.36.010; (2) exempt from the leasehold tax under chapter 82.29A RCW; or (3) used for nonprofit or sectarian purposes, which if said property were owned by such organization would qualify for exemption under chapter 84.36 RCW. The charges shall not be computed on the basis of an ad valorem charge on the underlying real property and improvements. This section shall not be used as a basis to directly or indirectly charge transportation impact fees or mitigation fees of any kind against new development. A city or town may contract with any other utility or local government to provide for billing and collection of the street utility charges.

In classifying service furnished within the general categories of business and residential, the city or town legislative authority may in its discretion consider any or all of the following factors: The difference in cost of service to the various users or traffic generators; location of the various users or traffic generators within the city or town; the difference in cost of maintenance, operation, construction, repair, and replacement of the various parts of the enterprise and facility; the different character of the service furnished to various users or traffic generators within the city or town; the size and quality of the street service furnished; the time of use or traffic generation; capital contributions made to the facility including but not limited to special assessments; and any other matters that present a reasonable difference as a ground for distinction, or the entire category of business or residential may be established as a single class. The city or town may reduce or exempt charges on residential properties to the extent of their occupancy by low-income senior citizens and low-income disabled citizens as provided in RCW 74.38.070(1), or to the extent of their occupancy by the needy or infirm.

The charges shall be charges against the property and the use thereof and shall become liens and be enforced in the same manner as rates and charges for the use of systems of sewerage under chapter 35.67 RCW.

Any city or town ordinance or resolution creating a street utility must contain a provision granting to any business a credit against any street utility charge the full amount of any commuter or employer tax paid for transportation purposes by that business. [1991 c 141 § 2. Prior: 1990 c 42 § 210.]

82.80.060 Use of other proceeds by utility. The city or town electing to own, construct, maintain, operate, and preserve its streets and related facilities as a utility under this chapter may finance the construction, operation, maintenance, and preservation through local improvement districts, utility local improvement districts, or with proceeds from general obligation bonds and revenue bonds payable from the charges issued in accordance with chapter 35.41, 35.92, or 39.46 RCW, or any combination thereof. The city or town may use, in addition to the charges authorized by RCW 82.80.050, funds from general taxation, money received from the federal, state, or other local governments, and other funds made available to it. The proceeds of the charges authorized by RCW 82.80.050 shall be used strictly for transportation purposes in accordance with this chapter and RCW 82.80.070. [1991 c 141 § 3. Prior: 1990 c 42 § 211.]

82.80.070 Use of revenues. (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010, 82.80.020, 82.80.030, and 82.80.050 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high-capacity transit improvements and programs; and planning, design, and acquisition of right of way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and

private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

(a) First, the project serves a multijurisdictional function;

(b) Second, it is necessitated by existing or reasonably foreseeable congestion;

(c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes. The association of Washington cities and the Washington state association of counties, in consultation with the legislative transportation committee, shall study the issue of nondiversion and make recommendations to the legislative transportation committee for language implementing the intent of this section by December 1, 1990.

(7) Local governments are encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section. [1991 c 141 § 4. Prior: 1990 c 42 § 212.]

82.80.080 Distribution of taxes. The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and 82.80.020, levied by counties to the levying counties, and cities contained in those counties, based on the relative per capita population. County population for purposes of this section is equal to one and one-half of the unincorporated

ed population of the county. In calculating the distributions, the state treasurer shall use the population estimates prepared by the state office of financial management and shall further calculate the distribution based on information supplied by the departments of licensing and revenue, as appropriate. [1990 c 42 § 213.]

82.80.090 Referendum. A referendum petition to repeal a county or city ordinance imposing a tax or fee authorized under RCW 82.80.020 and 82.80.030 must 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 fee being imposed and a negative answer to the question and a negative vote on the measure results in the tax or fee 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 has 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 must 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 or city legislative authority, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

The referendum procedure provided in this section is the exclusive method for subjecting any county or city ordinance imposing a tax or fee under RCW 82.80.020 and 82.80.030 to a referendum vote. [1990 c 42 § 214.]

82.80.900 Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42. See notes following RCW 82.36.025.

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.]

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.]

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.]

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.]

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.]

82.98.035 Saving—1967 ex.s. c 149. Nothing in *chapter 149, Laws of 1967 ex. sess. 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:** "Chapter 149, Laws of 1967 ex. sess." 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.]

